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TRANSACTIONS
Maryland State Bar Association.

FIFTH ANNUAL MEETING,

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REPORT

OF THE

FIFTH ANNUAL MEETING

OF THE

Maryland State Bar Association,

HELD AT

CUMBERLAND, MD.,

July 25th and 26th, 1900.

EDITED BY

CONWAY W. SAMS, Secretary,

OF THE BALTIMORE BAR.

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Printers and Engravers,
1900.

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LIST OF MEMBERS BY CIRCUITS.

FIRST CIRCUIT.

Barnes, Adlai P.	Snow Hill,	1896
Collins, Oliver D.	Snow Hill,	1897
Covington, George W.	Snow Hill,	1897
Dickerson, William T.	Snow Hill,	1896
Duer, Robert F.	Princess Anne,	1897
Ellegood, James E.	Salisbury,	1896
Goldsborough, Ph. Lee	Cambridge,	1897
Graham, Robert P.	Salisbury,	1896
Holland, Charles F.	Salisbury,	1897
Jones, R. D.	Snow Hill,	1897
Lankford, Clarence P.	Crisfield,	1896
Lankford, H. Fillmore	Princess Anne,	1897
Lloyd, Henry	Cambridge,	1897
McMaster, W. S.	Princess Anne,	1897
Miles, Joshua W.	Princess Anne,	1897
Page, Henry	Princess Anne,	1896
Pattison, John R.	Cambridge,	1897
Simmons, Thomas W.	Cambridge,	1897
Stanford, H. L. D.	Princess Anne,	1896
Toadvin, E. Stanley,	Salisbury,	1900
Tull, Gordon	Princess Anne,	1897
Waters, Henry J.	Princess Anne,	1896
Williams, Jay	Salisbury,	1897

SECOND CIRCUIT.

Adkins, W. H.	Easton,	1896
Barroll, Hope H.	Chestertown,	1896
Beck, William W.	Chestertown,	1897
Blake, George A.	Elkton,	1900
Bordley, Madison B.	Centreville,	1896
Covington, James H.	Easton,	1897
Crothers, Austin S.	Elkton,	1898
Deweese, William H.	Denton,	1897
Evans, William S.	Elkton,	1898
Fisher, T. Pliny	Denton,	1896

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SECOND CIRCUIT—Continued.

Haines, L. M.	Elkton,	1896
Hynson, R. D.	Chestertown,	1896
Keating, Thomas J., Jr.	Centreville,	1896
Legg, J. H. C.	Centreville,	1897
Lewis, Henry R.	Denton,	1896
Martin, William R.	Easton,	1896
Mullikin, Clayland	Easton,	1897
Owens, Fred. R.	Denton,	1897
Pearce, James A.	Chestertown,	1896
Russum, George M.	Denton,	1897
Seth, Joseph B.	Easton,	1899
Slay, William M.	Chestertown,	1897
Tharp, Alfred L.	Easton,	1897
Towers, Albert G.	Denton,	1897
Urie, John D.	Chestertown,	1897
Vickers, H. W.	Chestertown,	1897
Warburton, William T.	Elkton,	1898
Ward, Alfred L.	Easton,	1897
Wickes, L. W.	Chestertown,	1897
Wilson, George W.	Easton,	1896
Wirt, John S.	Elkton,	1896

THIRD CIRCUIT.

Allen, Edward M.	Bel Air,	1898
Biddison, John S.	Towson,	1897
Boarman, R. R.	Towson,	1897
Burke, N. C.	Towson,	1897
Bussey, Robert H.	Towson,	1898
Cook, Elmer J.	Towson,	1898
Duncan, Frank I.	Towson,	1898
Fowler, David	Towson,	1897
Gontrum, John F.	Towson,	1897
Grason, William G.	Towson,	1898
Hawkins, G. S.	Bel Air,	1896
Herman, Emmanuel A.	Towson,	1898
Lawrence, J. M. T.	Towson,	1897
Lindsay, James J.	Towson,	1896
Maynadier, George Y.	Bel Air,	1896
McIntosh, David G.	Towson,	1898
Piper, A. A.	Towson,	1898
Robinson, Thomas H.	Bel Air,	1896
Rouse, Willard G.	Bel Air,	1896

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THIRD CIRCUIT—Continued.

Shanklin, Arthur P.	Towson,	1899
Street, J. M.	Bel Air,	1899
Taylor, Calvin B.	Bel Air,	1897
Van Bibber, George L.	Bel Air,	1898
Webster, J. Edwin	Bel Air,	1896
Williams, Frederick R.	Bel Air,	1896
Williams, Stevenson A.	Bel Air,	1897
Young, John S.	Bel Air,	1896
Yellott, Osborne I.	Towson,	1898
Yellott, John I.	Towson,	1898

FOURTH CIRCUIT.

Armstrong, Alexander	Hagerstown,	1896
Blackistone, D. J.	Cumberland,	1896
Boyd, A. Hunter	Cumberland,	1896
Devecmon, W. C.	Cumberland,	1896
Doub, A. A.	Cumberland,	1896
Doub, Daniel W.	Hagerstown,	1896
Gordon, Robert H.	Cumberland,	1896
Hamill, Gilmor S.	Oakland,	1897
Henderson, Robert R.	Cumberland,	1896
Hendrickson, Finley C.	Cumberland,	1900
Keedy, J. M.	Hagerstown,	1896
Keedy, M. L.	Hagerstown,	1896
Kealhofer, William	Hagerstown,	1897
Lane, J. Clarence	Hagerstown,	1896
Little, C. A.	Hagerstown,	1896
Lowndes, Lloyd	Cumberland,	1897
Lowndes, Lloyd, Jr.	Cumberland,	1900
Macbeth, J. E.	Cumberland,	1900
Mason, J. Augustine	Hagerstown,	1897
McCleave, Hugh R.	Cumberland,	1900
McHenry, James A.	Cumberland,	1897
McHenry, James I.	Cumberland,	1898
McMichael, Robert W.	Cumberland,	1897
Mitchell, John T.	Oakland,	1900
Morrison, Taylor	Cumberland,	1898
Neill, Alexander	Hagerstown,	1896
Pearre, George W.	Cumberland,	1898
Purnell, Clayton	Frostburg,	1896
Reynolds, De Warren H.	Cumberland,	1896
Richmond, Benjamin A.	Cumberland,	1896

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FOURTH CIRCUIT—Continued.

Robb, David A.	Cumberland,	1900
Schley, Buchanan	Hagerstown,	1896
Scott, Norman B., Jr.	Hagerstown,	1896
Sincell, Edward H.	Oakland,	1898
Sloan, D. Lindley,	Cumberland,	1900
Sloan, David W.	Cumberland,	1896
Smith, George W., Jr.	Hagerstown,	1896
Stake, Edward	Hagerstown,	1898
Strite, A. C.	Hagerstown,	1896
Syester, Louis D.	Hagerstown,	1897
Thayer, F. A.	Oakland,	1898
Thomas, James W.	Cumberland,	1897
Wagaman, Charles D.	Hagerstown,	1896
Walsh, Michael E.	Westminster,	1898
Walsh, William E.	Cumberland,	1896
Weant, Edward O.	Westminster,	1898
Williams, Ferdinand	Cumberland,	1897
Willison, Jasper N.	Cumberland,	1900
Wilson, Austin A.	Cumberland,	1897
Wilson, John Glover	Cumberland,	1897
Witzenbacker, Wm. J.	Hagerstown,	1896
Wingert, Henry F.	Hagerstown,	1897

FIFTH CIRCUIT.

Bond, J. A. C.	Westminster,	1896
Clabaugh, Harry M.	Westminster,	1896
Claude, W. Hallam	Annapolis,	1898
Dorsey, J. Malcolm	Ellicott City,	1900
Fink, Charles E.	Westminster,	1896
Forbes, George	Annapolis,	1896
Green, Nicholas H.	Annapolis,	1899
Henning, David N.	Westminster,	1896
Loweree, George E.	Laurel,	1896
Munroe, James M.	Annapolis,	1899
Owens, James W.	Annapolis,	1898
Parke, Francis Neal	Westminster,	1898
Reifsneider, Charles T.	Westminster,	1896
Reifsneider, Chas. T., Jr.	Westminster,	1899
Reifsneider, John Milton	Westminster,	1898
Revell, James	Annapolis,	1900
Riley, Elihu S.	Annapolis,	1896
Rogers, John G.	Ellicott City,	1898
Steele, Guy W.	Westminster,	1898
Thomas, William H.	Westminster,	1899

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SIXTH CIRCUIT.

Bouic, W. Viers, Jr.	Rockville,	1896
Eichelberger, Edward S.	Frederick,	1896
Fauble, T. Marvin	Frederick,	1898
Gould, Ashley M.	Rockville,	1898
Hinks, William H.	Frederick,	1897
Johnson, Baker	Frederick,	1896
Lynch, John A.	Frederick,	1897
Maulsby, William P.	Frederick,	1896
McSherry, J. Roger	Frederick,	1897
McSherry, James	Frederick,	1896
Motter, John C.	Frederick,	1897
Norwood, Frank C.	Frederick,	1897
Prettyman, Charles W.	Rockville,	1900
Ross, Charles W.	Frederick,	1897
Rutherford, Allan	Gaithersburg,	1899
Sebold, Vincent	Frederick,	1897
Stoner, Frank L.	Frederick,	1897
Talbott, William H.	Rockville,	1896
Talbott, Hattersly W.	Rockville,	1899
Urner, Hammond	Frederick,	1898
Urner, Milton G.	Frederick,	1897
Worthington, Glenn H.	Frederick,	1897

SEVENTH CIRCUIT.

Briscoe, John P.	Prince Frederick,	1896
Bunting, J. Briscoe	Prince Frederick,	1896
Chew, Philip W.	Upper Marlboro,	1896
Contee, John B.	Upper Marlboro,	1898
Gray, John B.	Prince Frederick,	1896
Magruder, C. C.	Upper Marlboro,	1896
Merrick, George C.	Upper Marlboro,	1899
Mitchell, John H.	La Plata,	1896
Parran, J. Frank	Prince Frederick,	1896
Rogers, James C.	Hyattsville,	1900
Sasscer, Frederick	Upper Marlboro,	1900
Wilmer, L. Allison	La Plata,	1896

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EIGHTH CIRCUIT.

Ambler, James M.	207 N. Calvert st., Baltimore,	1897
Applegarth, Rufus W.	10 E. Lexington st., Baltimore,	1897
Baer, Thomas S.	818 Equitable Building, Baltimore,	1897
Baetjer, E. J.	205 E. German st., Baltimore,	1898
Baker, J. Henry	10 E. Lexington st., Baltimore,	1899
Bayless, W. H.	Daily Record Building, Baltimore,	1897
Bernard, Richard	1 E. Lexington st., Baltimore,	1897
Bernard, Alfred D.	1 E. Lexington st., Baltimore,	1897
Bernei, Louis B.	12 St. Paul st., Baltimore,	1897
Bond, Nicholas P.	830 Equitable Building, Baltimore,	1896
Bonsal, Leigh	500 Equitable Building, Baltimore,	1897
Bowie, Washington, Jr.	Fidelity Building, Baltimore,	1900
Boyd, J. Cookman	16 Builders Exchange, Baltimore,	1899
Brantly, William T.	12 St. Paul st., Baltimore,	1897
Brinton, Daniel L.	312 Law Building, Baltimore,	1897
Brent, Robert F.	104 E. Lexington st., Baltimore,	1897
Broening, Henry J.	230 St. Paul st., Baltimore,	1897
Brown, Stewart	222 St. Paul st., Baltimore,	1896
Brown, Arthur George	222 St. Paul st., Baltimore,	1897
Brune, W. H.	315 Law Building, Baltimore,	1897
Bryan, William S., Jr.	101 N. Charles st., Baltimore,	1898
Budnitz, Emil	20 E. Lexington st., Baltimore,	1897
Burton, Robert	315 Law Building, Baltimore,	1899
Campbell, Peter J.	20 E. Lexington st., Baltimore,	1896
Carey, Francis K.	830 Equitable Building, Baltimore,	1896
Carr, James E., Jr.	218 St. Paul st., Baltimore,	1899
Carrington, Edward C.	110 E. Lexington st., Baltimore,	1897
Chancellor, A. Bernard	11½ E. Lexington st., Baltimore,	1897
Chapman, James W., Jr.	310 Equitable Building, Baltimore,	1900
Cohen, Jacob I.	Merchants Bank Bldg., Baltimore,	1897
Crain, Robert	607 Fidelity Building, Baltimore,	1898
Cross, E. J. D.	B. & O. Central Bldg., Baltimore,	1897
Cross, Richard K.	12 St. Paul st., Baltimore,	1897
Cross, W. Irvine	B. & O. Central Bldg., Baltimore,	1897
Curley, James P.	400 Equitable Building, Baltimore,	1900
Dawkins, Walter I.	311 Fidelity Building, Baltimore,	1896
Dawson, W. H.	33 S. Gay st., Baltimore,	1897
Dennis, J. Upshur	Baltimore,	1897
Denny, James W.	209 St. Paul st., Baltimore,	1897
Dillehunt, Harry B.	10 E. Lexington st., Baltimore,	1899
Dobler, J. J.	Baltimore,	1897
Donaldson, John J.	220 St. Paul st., Baltimore,	1897
Dorton, Frederick T.	444 Equitable Bldg., Baltimore,	1899

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EIGHTH CIRCUIT—Continued.

Eichelberger, Edward C.	114 E. Lexington st., Baltimore,	1897
Elliott, Thomas Ireland	400 Equitable Bldg., Baltimore,	1897
Farber, Edwin J.	101 N. Charles st., Baltimore,	1898
Fechtig, James A., Jr.	16 E. Lexington st., Baltimore,	1900
Fisher, D. K. Este	744 Equitable Bldg., Baltimore,	1897
Fisher, William A.	744 Equitable Bldg., Baltimore,	1897
France, Joseph C.	Bank of Balto. Bldg., Baltimore,	1897
Gaither, George R., Jr.	728 Equitable Bldg., Baltimore,	1899
Gans, Edgar H.	300 Equitable Bldg., Baltimore,	1897
Gibson, Edward Guest	511 Fidelity Bldg., Baltimore,	1897
Gill, N. Rufus	215 St. Paul st., Baltimore,	1899
Gill, Roger T.	215 St. Paul st., Baltimore,	1900
Gorter, James P.	224 St. Paul st., Baltimore,	1896
Gosnell, Frank	102 E. Lexington st., Baltimore,	1896
Gregg, Maurice	114 E. Lexington st., Baltimore,	1896
Gresham, Le Roy	3 E. Lexington st., Baltimore,	1900
Griffin, E. J.	215 E. Fayette st., Baltimore,	1897
Hardcastle, Alexander, Jr.	Bank of Balto. Bldg., Baltimore,	1898
Harlan, Henry D.	9 E. Biddle st., Baltimore,	1897
Harley, Charles F.,	110 E. Lexington st., Baltimore,	1897
Harman, Samuel J.	8 E. Lexington st., Baltimore,	1898
Harvey, Roland B.	500 Equitable Bldg., Baltimore,	1900
Hayes, Thomas G.	944 Equitable Bldg., Baltimore,	1897
Henninghausen, Percy C.	215 St. Paul st., Baltimore,	1897
Hershey, O. F.	606 Fidelity Bldg., Baltimore,	1898
Herzog, Charles	110 E. Lexington st., Baltimore,	1897
Heuisler, Charles W.	504 Fidelity Bldg., Baltimore,	1897
Hill, Charles E.	3 E. Lexington st., Baltimore,	1898
Hinkley, John	215 N. Charles st., Baltimore,	1896
Hisky, T. Foley	215 N. Charles st., Baltimore,	1897
Hoen, Ernest J.	Hoen Bldg., Baltimore,	1898
Hodson, Thomas S.	6 E. Lexington st., Baltimore,	1897
Houlton, S. C.	2 E. Lexington st., Baltimore,	1897
Howard, Charles Norris	700 Equitable Bldg., Baltimore,	1897
Hughes, Adrian	219 Courtland st., Baltimore,	1897
Hurst, John J.	513 Law Bldg., Baltimore,	1900
Johnson, J. Hemsley	Bank of Balto. Bldg., Baltimore,	1897
Johnson, Reverdy	Bank of Balto. Bldg., Baltimore,	1896
Jones, E. T.	601 Fidelity Bldg., Baltimore,	1897
Kennard, Henry C.	506 Fidelity Bldg., Baltimore,	1899
Knott, A. Leo	3 E. Lexington st., Baltimore,	1897
Knapp, Charles H.	8 E. Lexington st., Baltimore,	1899
Lauchheimer, Sylvan H.	752 Equitable Bldg., Baltimore,	1899

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EIGHTH CIRCUIT—Continued.

Lee, John L. G.	B. & O. Central Bldg., Baltimore,	1897
Lee, Richard Laws	232 St. Paul st., Baltimore,	1897
Lehmayer, Martin	Herald Bldg., Baltimore,	1897
Leist, Frederic	Post Office Bldg., Baltimore,	1897
Levy, William B.	501 Fidelity Bldg., Baltimore,	1898
Lewis, William Penn, Jr.	Builders Exchange, Baltimore,	1898
Mackall, Thomas B.	222 St. Paul st., Baltimore,	1897
Mackenzie, Geo. Norbury	300 Water st., Baltimore,	1897
Mann, Harry E.	100 E. Lexington st., Baltimore,	1897
Marbury, William L.	922 Equitable Bldg., Baltimore,	1897
Marshall, Charles	12 St. Paul st., Baltimore,	1898
Mason, John T., R.	200 E. Lexington st., Baltimore,	1897
McLane, Allan	44 South st., Baltimore,	1899
McLane, Robert M.	44 South st., Baltimore,	1899
Miles, Alonzo L.	Bank of Balto. Bldg., Baltimore,	1897
Mister, Beverly W.	400 Equitable Bldg., Baltimore,	1900
Morris, Thomas J.	708 Park ave., Baltimore,	1897
Morris, John T.	215 N. Charles st., Baltimore,	1899
Mullin, Michael A.	609 Fidelity Bldg., Baltimore,	1897
Mullin, Joseph C.	609 Fidelity Bldg., Baltimore,	1899
Niles, Alfred S.	Herald Bldg., Baltimore,	1897
O'Brien, William J., Jr.	804 Fidelity Bldg., Baltimore,	1897
Packard, Joseph	207 N. Calvert st., Baltimore,	1897
Perkins, William H., Jr.	700 Equitable Bldg., Baltimore,	1900
Phelps, Charles E.	Walbrook, Baltimore,	1897
Poe, John P.	100 E. Lexington st., Baltimore,	1896
Quigley, Charles H.	401 Law Bldg., Baltimore,	1899
Reese, D. Meredith	213 Courtland st., Baltimore,	1897
Requardt, J. Fred.	322 Equitable Bldg., Baltimore,	1897
Revell, E. J. W.	503 Fidelity Bldg., Baltimore,	1900
Rhodes, Frank V.	701 Fidelity Bldg., Baltimore,	1897
Riggs, Lawrason	919 Equitable Bldg., Baltimore,	1896
Robertson, Alex. H.	324 Equitable Bldg., Baltimore,	1896
Robinson, Ralph	741 Equitable Bldg., Baltimore,	1896
Rogers, Robert L.	46 Post Office Bldg., Baltimore,	1899
Rose, John C.	628 Equitable Bldg., Baltimore,	1897
Sadtler, Howard P.	626 Equitable Bldg., Baltimore,	1897
Sams, Conway W.	Bank of Balto. Bldg., Baltimore,	1896
Sappington, A. De R.	502 Fidelity Bldg., Baltimore,	1897
Savage, George	415 Law Bldg., Baltimore,	1897
Schmucker, Samuel D.	1712 Park ave., Baltimore,	1897
Shanahan, Charles E.	102 E. Lexington st., Baltimore,	1897
Sharp, Abraham	100 E. Lexington st., Baltimore,	1899

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EIGHTH CIRCUIT—Continued.

Sharp, George M.	Baltimore,	1896
Skinner, Maurice E.	416 Equitable Bldg., Baltimore,	1897
Slingluff, Fielder C.	309 Fidelity Bldg., Baltimore,	1899
Smith, Robert H.	622 Equitable Bldg., Baltimore,	1897
Spamer, C. A. E.	215 N. Charles st., Baltimore,	1897
Stanley, Charles H.	400 Equitable Bldg., Baltimore,	1897
Steele, John N.	830 Equitable Bldg., Baltimore,	1898
Steiner, Hugo	309 Law Bldg., Baltimore,	1897
Stevens, Francis P.	Herald Bldg., Baltimore,	1897
Stewart, David	101 N. Charles st., Baltimore,	1897
Stockbridge, Henry	11 N. Calhoun st., Baltimore,	1897
Story, Fred. W.	Builders Exchange, Baltimore,	1897
Straus, Isaac Lobe	12 St. Paul st., Baltimore,	1900
Taylor, A. H.	205 E. German st., Baltimore,	1898
Thomas, George C.	221 St. Paul st., Baltimore,	1899
Thomas, George L.	12 St. Paul st., Baltimore,	1897
Thomas, William S.	Hoen Bldg., Baltimore,	1898
Tiernan, Charles B.	11 E. Lexington st., Baltimore,	1897
Tippett, Richard B.	601 Law Bldg., Baltimore,	1897
Tome, Peter E.	33 S. Gay st., Baltimore,	1898
Trundle, W. Burns	301 St. Paul st., Baltimore,	1897
Turner, Frank G.	3 E. Lexington st., Baltimore,	1899
Tyson, A. Morris	207 N. Calvert st., Baltimore,	1897
Upshur, George M.	737 Equitable Bldg., Baltimore,	1898
Venable, Richard M.	205 E. German st., Baltimore,	1897
Walter, M. R.	Herald Bldg., Baltimore,	1897
Warfield, Edwin	Fidelity & Deposit Co., Baltimore,	1897
Warfield, John	Daily Record Bldg., Baltimore,	1898
Warner, C. Hopewell	Herald Bldg., Baltimore,	1897
Waters, J. Seymour T.	14 E. Lexington st., Baltimore,	1899
Watts, P. Bartley	222 St. Paul st., Baltimore,	1897
Whelan, Thomas A.	509 Fidelity Bldg., Baltimore,	1897
Williams, George Weems	3 E. Lexington st., Baltimore,	1900
Williams, John F.	509 Law Bldg., Baltimore,	1897
Willis, George R.	213 Courtland st., Baltimore,	1897
Wilmer, Skipwith	207 N. Calvert st., Baltimore,	1897
Whitelock, George	708 Fidelity Bldg., Baltimore,	1896
Wolff, Oscar	Herald Bldg., Baltimore,	1898
Wright, Daniel Giraud	142 W. Lanvale st., Baltimore,	1897

WASHINGTON, D. C.

Bowen, Philander A., Jr.	1410 G st., N. W.,	1898
McComas, L. E.	Washington, D. C.,	1897

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TRANSACTIONS

OF THE

FIFTH ANNUAL MEETING

OF THE

Maryland State Bar Association,

HELD AT

CUMBERLAND, MD.,

JULY 25th and 26th, 1900.

The President: The Association will please come to order.

Mr. James W. Thomas: Mr. President and gentlemen of the Maryland State Bar Association: On behalf of the Bar Association of Allegany County, I extend to you a most cordial greeting. The Queen City of the Alleganies has "lifted up her gates, swung open her doors and bids you enter," and now that you are safely here, with open heart and extended hand we welcome you. We welcome you

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to our city; we welcome you to our homes; we welcome you to this tabernacle, dedicated to the sacred cause of justice. This we do not only because you are members of a kindred brotherhood, but more particularly because you are representatives of that great profession—the law. That profession whose high and holy office it is to administer justice, to ameliorate the law, to advance civilization and to stand as the constituted and faithful guardian of all true human rights. That profession which has been distinguished during all periods of our history by the firm and fearless support of its members to the principles which underlie our social organism, our institutions of liberty and our civic honor. That profession which is so closely interwoven not only with our state but with our national existence and our national life, by its members having been the expounders of our colonial charters; by their having sounded the keynote of independence when charter rights were infringed and denied; by their having been the chief constructors of that enduring monument to wisdom, patriotism and statesmanship—the American Constitution—and by their still performing the high function of giving interpretation to that Constitution and by maintaining and zealously guarding the sacred rights which it guarantees. That profession which gave the matchless Webster to the bar and the spotless Taney to the bench.

That profession which, by reason of the love of right, the broad views, the disciplined mind and the educated skill of its members, enjoys that degree of renown for cultured talent and for conservative

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statesmanship, which marks and dignifies the American Bar as one of the crowning glories of the closing century.

Mr. President and gentlemen, accept the assurance of our high esteem and permit me to indulge the hope that the meeting of the Maryland State Bar Association of 1900 will be signalized by a "white stone" in its history, and that its fragrant memories will live long and green in the hearts and the recollection of us all.

Gentlemen, I again beg leave to add to your presence here the expression of our hail, and to extend to you, one and all, the most cordial salutations of the season.

The President: On behalf of the Maryland State Bar Association it gives me very great pleasure to acknowledge the warm welcome which has just been extended to us. It is always a pleasure for us individually and collectively to be received with so much cordiality.

The culture, refinement and the hospitality of this spot is so thoroughly well-known and understood that none of us can go to our homes without retaining impressions of Cumberland and its Bar which shall be pleasant and enduring.

In addition to that, when I go back and remember the great numbers of illustrious names which adorned and some of which still adorn the Bar of Cumberland and think how much they have added to the honor and reputation of the Maryland Bar, it seems especially appropriate that the Maryland Bar should gather

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here now and catch some inspiration from the lives of the men, living or dead, who have done so much to illustrate and exemplify the best traditions of the profession.

We shall leave here and carry with us the most delightful memories of our sojourn stimulated by such thoughts and such examples.

We thank the Bar of Cumberland for the warm welcome they have given to us and hope that our stay here will be as pleasant to them as we expect it to be pleasant to us.

The first business on the programme is the President's Annual Address, on the subject "The Origin and Sources of the Law."

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PRESIDENT'S ANNUAL ADDRESS.

THE ORIGIN AND SOURCES OF THE LAW.

BY JUDGE HENRY PAGE.

The law of this Association requires that the President "shall deliver an address at the opening of the annual meeting, next after the election," and custom, as well as propriety, demands that it shall be upon some topic relevant to the law.

In the performance of the duty thus imposed, I desire to utter no voice of warning nor indeed of criticism, but rather one in vindication of a feature of a settled judicial habit, that, whether for good or ill, has had a profound influence upon the innermost structure of the law.

The origin and sources of the law, have been the subjects of much investigation in recent years, and it has resulted, in the opinion of certain persons entitled to great respect, that no thoroughly philosophic conception of modern legal rules, can be obtained without a knowledge of the primitive ideas from which they sprang, and an understanding of the intervening social development, Indeed it has at last come to this, that with the broader views which modern research has inculcated, a definition of law, so complete and comprehensive as to avert hostile criticism, seems to be nearly impossible; so that we

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may understand the almost despairing cry of the distinguished lawyer, when he said recently, "if you ask me to define what is meant by law, what it really is, and all of the sources whence it comes, and how it is evolved, I hide my diminished head and confess my inability fully and adequately to formulate the definition and to answer the inquiry." I assuredly am not bold enough on this occasion, to rush in where so eminent a jurist as Judge Dillon feared to tread and yet, for the purposes I have in view, it cannot be avoided, that I shall state the meaning that I attach to the word "law," as employed in this paper; and I cannot do that better than by quoting the words of a distinguished writer: "law," he said, "is, in fact, formulated and armed public opinion, or the opinion of the ruling body. It announces, not only that certain states of things and courses of action are viewed by it with favor, but also that in case of the invasion of these states of things, or in case of contrary courses of acting being pursued, it will not only look on with disfavor, but will also actively intervene to restore the disturbed balance." (Holland on Jurisprudence, p. 61).

Having thus stated what is meant by the word law, as hereinafter used, let me direct your attention to one of its most prolific sources. It is probably a popular impression among laymen that the great body of the law owes its origin to legislative action only, but there is no lawyer who does not know that of all the numerous rules and principles by which controversies of all kinds are determined in the courts, a very large percentage owe their existence solely

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to judicial decision. To be more explicit, it is an unquestioned fact, that the courts in the discharge of their functions of deciding cases, lay down rules and principles, which acquire the force of law, and are in fact law. This product of the courts, known to the profession as judiciary law, forms a large part of the great body of the law. At first sight it may indeed seem anomalous, that in a country like ours, where the judicial and legislative powers are carefully separated by the organic law, that the courts should habitually exercise the function of promulgating law. The anomaly is more fanciful than real, as I trust will appear later on. But it is quite sufficient to bring upon the courts the attacks of some noted persons, particularly, among others, of Jeremy Bentham, who gave in derision, that kind of law, the name of "judge-made law." A recent writer has said of that really great man, that he held judiciary law in "sovereign contempt," and he cited a passage from Bentham's writings in which the latter laments, that a case having been brought to him for his opinion, he had ransacked all the codes, but found his views were wrong according to a manuscript unknown to him, "containing a report of I know not what opinion, said to have been delivered before I was born and locked up as usual for the purpose of being kept or produced as occasion served." This criticism when carefully scrutinized contains within its folds the two most important objections that can be made to judiciary law, *viz.:* that the courts in making such law, invade and usurp the legislative functions, and second, that such law introduces an element of uncertainty

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into the administration of the courts that impedes or destroys the attainment of real justice and equity. It must be conceded, that in the distribution of the powers of government, the authority to formulate and promulgate laws is confided exclusively to the legislature; and to the courts are granted only the power of deciding. The function of the former is to promulgate, in determinate expression, the will of the sovereign people; of the latter, to decide upon the proper meaning of such expression. But it would be a great error to assume, that the judicial duty and authority extends no farther than that of merely construing the provisions of the concrete law, as registered by the law-making department. The courts are called upon to do much more than that; they are, in all cases, to consider the right of the matter, according to the terms of the concrete law it is true, but also to decide in accordance with the fundamental principles of right and justice. Lord Hardwicke in Willoughly *vs.* Willoughly, 1 T. R., 765, said, "equity always considers who has the right in conscience;" and our own Court of Appeals in Talbot *vs.* Queen Anne's County, 50 Md., invoked "those fundamental maxims of right and justice with respect to which all governments and societies are supposed to be organized."

As long therefore as courts give full effect to the legislative enactments they do not exceed the powers conferred upon them, where their decisions are moulded to conform to the essential principles of "right and justice." A rule laid down by them upon such foundation, it may be said, rests upon the will

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of the sovereign power, as fully and completely as if the power to promulgate such rules had been specifically granted. The making of judiciary law, in proper cases, therefore is not a legislative act at all, but the necessary accompaniment of the faculty of judging. A statute carries the force of law from the moment of its promulgation, but a decision of a court has no weight, except in the particular case. What is of force in a judicial decision, is the principle that it contains, its "*ratio-dicendi.*" If that be wicked or unwise it is no law at all, because it does not rest upon grounds that are consistent with reason and justice. It can never have the force of law until it has been recognized as just and reasonable, and it then becomes of binding obligation, because it is.

The other objection is most frequently raised by the advocates of the code system. These entertain the opinion, that there can be no abiding progress, until all the principles and rules of the law have been formulated and embodied in a code. It is a curious fact, however, that these very persons admit, as they are forced to do, the total insufficiency of all existing (and indeed ancient) codes to adequately meet the exigencies of the case. Austin, for instance, speaking of the Pandects, Institutes and Novels of Justinian, says of them that they are not a code at all, but a "body or heap of statutory and judiciary law without scientific arrangement," and in other parts of his work, he devotes pages to the explanation of the causes of the conceded failure of the French and Prussian Codes. I must not, however, digress into a discussion of this interesting matter. It has pro-

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voked much controversy and is yet far from being settled. It seems, however, to be quite clear, that the advocates of the code must be included among those who believe that the law should consist of formulated rules, relating to classes of cases, and applicable to every case, within the special class. But it is in the divergence of the English system from such an iron-bound theory, that must be found its chief claim to our regard. Our jurisprudence is not an inert mass, but a body of living rules, firmly rooted and grounded in natural right and justice, but sufficiently elastic to be always capable of application to the ever shifting necessities of a progressive people. It cannot be said of it, that it is as unchanging and unchangeable as the laws of the Medes and Persians, for while in one sense that may be true, in another it is not. When, after careful argument and mature deliberation, a court has rendered a decision, it must *prima-facie* be presumed to be correct, and should therefore not be lightly dealt with. Stability is necessary in order to protect the interests of the people from perplexing uncertainties. But when there exist cogent reasons for reviewing a decision, it ought, as was said by Chancellor Kent, "to be examined without fear and revised without reluctance."

And so it will appear that courts have more than once cut out fossil ideas which having come down to us from the past remained to impede the march of progress, and in the place of them have announced new rules, so framed as to meet the altered circumstances. Inutile precedents, which are obstacles in the path of modern enterprise, or operate to hinder

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the development of commerce and trade, of the arts and sciences, of moral or physical growth, ought to be (and are) swept ruthlessly aside. Thus the law, while ever remaining fundamentally unchanged, is moulded in its applications by the contemporary ideas and needs of society. A great error will be made, if it be assumed, that judiciary law is the product of the judges only who announce it. In fact it is the joint product of the bench and bar. An able judiciary is impossible without an able bar, and without the assistance and advice of members of the bar, courts would find it impossible to mould their decisions so as to meet efficiently and safely the requirements of society and promote and conserve its best interests. So also an efficient judiciary must be in close touch with the people; not that it may cater to popular moods, but that it may more completely catch something of their aspirations and their needs. For this, as well as for other reasons, I have always thought, that an appellate judge, should have some means of closer touch with the bar and the social affairs of the people, than that which is afforded by the proceedings in his court, where for the most part, questions of law only are argued and determined. And for the same reason, I venture to affirm with confidence, that the most valuable feature of the judicial system of this state, is that which enables the judges of our Court of Appeals to sit in the *nisi prius* courts, where they are brought into terms of intimacy with the lawyers and hear face to face the appeals of the litigants. Any judge who has had this experience will not fail to testify that he has

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found another and different atmosphere below and one that it is good for him to breathe once in a while.

It must be conceded, that in no other system of jurisprudence, has greater power been allowed to the courts in the making of judiciary law, than in that which has come down to us from English sources. The edicts and decretes of Rome, the utterances of the jurisprudentes of that and other countries, have indeed had attributed to them the force of law, but the character of the rules so promulgated, were and are essentially different from the judiciary law of our day. Neither in Rome, nor under any of the Continental Codes, have the courts had the power and authority to apply to novel situations, modified rules deemed requisite for the attainment of justice and equity. Yet all down the pathway of English jurisprudence can be noted the decisive influence of judiciary law, and it is not rash to affirm that such influence never was more apparent than during the last one hundred and fifty years. Let me emphasize the last remark by bringing to your attention two out of many illustrations that could be furnished. It may reasonably be questioned whether that large body of legal principles, now known as commercial law, existed at all under the common law. Story has said, that "if the expression, that the *lex mercatoria* is part of the common law, be anything more than an idle boast, it can mean only that the general structure of the common law is such, that without any positive act of the legislature, it perpetually admits of the incorporation of those principles and practices, which are from time to time established among merchants, and which from

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their convenience, policy and consonance with the general system, are proper to be recognized by judicial tribunals. (Mis. Writings, 1835, p. 300, 302). As late as 1787, in the leading case of Lickbarrow *vs.* Mason, 2 Term, R., 73, Buller, J., said, "it was only since 1747, that commercial law in England had taken a different turn from what it had before." "Before that period * * * in courts of law, all the evidence in mercantile cases was thrown together; they were left generally to a jury and they produced no established principle." To appreciate the progress since that period, compare this statement, with that made by Denman, in 1843, in the case of Barnett *vs.* Brandao, 6 Manning and Granger, 665. The learned chief justice then said, that "the law merchant forms a branch of the law of England, and those customs which have been universally and notoriously prevalent among merchants, and have been found by experience to be of public use, have been adopted as a part of it upon a principle of convenience and for the benefit of trade and commerce, and when so adopted, it is unnecessary to plead or prove them." The legal Moses, who inaugurated the march out of the wilderness that enveloped commercial law, was the eminent Lord Chief Justice Mansfield. For this venerable personage the Bar of England and this country, must ever entertain unlimited respect and admiration. Highly endowed with natural gifts he improved, by unremitting industry, his understanding, until be became almost without a peer in every mental accomplishment. It was of him that Pope sang, "how sweet an Ovid was in Murray lost," and

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Burke once said, "his ideas go to the growing melioration of the law, by making its liberality keep pace with the demands of justice and the actual concerns of the world, not restricting the infinitely diversified occasions of men and the rules of natural justice within artificial circumspections, but conforming our jurisprudence to the growth of our commerce and of our empire." His conception of what a judge ought to be, was told us by himself in the trial of the celebrated John Wilkes. Mansfield having been assailed by anonymous writers, by slanderous publications and by threats of personal violence, referred to them in delivering his opinion. He said, "I will do my duty unawed. I wish popularity, but it is that popularity which follows and not that which is run after; it is that popularity which sooner or later never fails to do justice to the pursuit of noble ends by noble means; I will not do that which my conscience tells me is wrong upon this occasion to gain the huzzas of thousands or the daily praise of all the papers which come from the press." An accomplished scholar, an astute politician, an orator second only to the elder Pitt, he was equally qualified to succeed either in the field of politics or of letters. Yet he deliberately cast aside the allurements of political preferment and of literary success that he might devote his splendid talents to the service of the law. He discharged the duties of his high office with consummate ability, and, as was said by a not over-partial writer, he "impressed himself upon the minds of his contemporaries, as one of the best examples of what a judge ought to be, and from that estimate a closer exami-

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nation of his claims will scarcely lead us to differ." Mansfield found the mercantile law of England a skeleton, he gave it a body; it was without established principles, and he reduced it to order, and, as remarks Lord Campbell, he "promulgated many rules that now appear to us to be as certain as those which guide the planets in their orbits." I need only add that since his day, English-speaking judges in England and in this country and elsewhere have steadily developed and extended the principles of mercantile law, until finally there has resulted that splendid body of law under which has flourished the most extensive commercial expansion the world has ever seen.

Let me now turn to another field in which judiciary law has had a conspicuous influence—that is in Equity. I have selected this, because it seems to me that equity has furnished the widest scope for the exercise of judicial discretion, and will therefore afford the best test of the real character of judiciary law. Whatever may be the origin of the Court of Equity, whether it was originally a part of the *Aula Regis*, or was merely an expansion of the royal power and duty to deliver to the subject *æquam et rectam justitiam*, it is clear that its function has always been to furnish adequate justice in cases where that could not be done according to the practice of common law courts. From the very beginning, therefore, it was emphatically a court of conscience, and was in its early days of that character so thoroughly, that the only law that restrained and guided the exercise of its powers was the conscience of the chancellor, as directed by the principles of natural right and justice.

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Such an unlimited grant of power, as a matter of course, was liable to the greatest abuses, since (as has been frequently pointed out) without established rules, the conscience of the chancellor, as it might be larger or narrower, made up the standard of equity, 3 Black, 433. It seems to be entirely in line with reasonable probabilities that it was because of their supposed superior understanding of all matters touching the conscience, that for a long period, the English chancellors were so frequently taken from among the prelates. But prelates, however eminent and astute they may have been in other fields, were not fitted for the discharge of the functions of that high tribunal, upon philosphic principles. Blackstone, (3rd. Book), with cruel plainness of speech says of them, that their failure was due partly to "ignorance of the law," partly to "ambition or the lust of power," but principally from the arrogation "of such unlimited authority as hath totally been disclaimed by their successors for now above a century past." It was only with the accession of the lawyers to the chancellorship, that this reproach to the equity practice could be no longer applied. It was to the labors and genius of the lawyers, that equity was elevated to the position of a fixed and rational system of jurisprudence.

Many writers ascribe the commencement of this era of development to Lord Nottingham, of whom Judge Story says, "he possessed a fine genius, great liberality of views, and a thorough comprehension of the true principles of equity; so that he was enabled to disentangle the doctrines from any narrow and

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technical notions, and to expand the remedial justice of the court far beyond the aims of his predecessors. In the course of nine years, during which he presided in the court, he built up a system of jurisprudence and jurisdiction upon wide and rational foundations, which served as a model for succeeding judges and gave a new character to the court, and hence he has been emphatically called "the father of equity." It was during his period, that there arose, as was pointed out by Judge Phelps, in his singularly able end elegant treatise on Equity Jurisprudence, the "modern conception of a disciplined conscience," *viz.*:—"not the natural conscience, not the crude impulse of an untrained mind, however honest and intelligent, not even the *arbitrium boni viri*, but an artificial or judicial conscience, only to be acquired by large experience, study and practice, and only made possible of acquisition by the accumulation of a mass of precedent, and the evolution therefrom of a settled system of principles, maxims and doctrines." It was fortunate for English jurisprudence that the chancellorship was successively filled thereafter by lawyers whose learning, wisdom and eminent abilities contributed to the development of the philosophic system so ably begun by Nottingham. The equity lawyer, when he scans the long line of modern chancellors, dwells with unfeigned delight and admiration upon the labors of Cowper, Camden, Thurlow and others, but when he has studied the luminous opinions of Hardwicke and of Eldon, and marks with what acute analysis and consummate learning and wisdom they dispensed a conscientious and philosophic equity,

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founded upon sound principles, our admiration is lost in wonder and reverence. Lord Hardwicke, to whom equity jurisprudence owes so much is one of the most revered judges who ever graced any bench. His judicial career has exacted this tribute from his contemporaries as well as from those who have come after him. Posterity is in full accord with Lord Kenyon, himself entitled to a legal crown, when in Goodtitle *vs.* Otway, 7 T. R., 416, he paid the following tribute to his memory. "I am old enough," said the learned chief justice, "to remember that great judge, though but for a short time before he left the court of chancery, and the knowledge of those who lived before me only fortified me in the opinion I formed of him, that his knowledge of the law was most extraordinary; he had been trained up very early in the pursuit; he had great industry and abilities, and was, in short, a consummate master of his profession." Of the remaining one of this illustrious trio, Nottingham, Hardwicke and Eldon, in this presence, but little need be said. There is no lawyer in active practice who is not sufficiently familiar with his decisions to be able to bear testimony to their character. What Nottingham and Hardwicke and others had failed to rule, so as to round out a complete system of equitable relief, Eldon supplied. For twenty years he remained chancellor, and at the end of his administration equitable doctrines had assumed the scope they now have. Equity has become a noble system of jurisprudence. The unseemly quarrels with courts of law have ceased, and *equitas legem sequitur*, is now

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as well-established a principle as any other. The conscience of the court is not now the untrammeled will of the judge, but the wise application of principles deducible from prior decisions.

No department of our law, is founded upon principles more philosophic or more elastic. No conditions of fact can now arise in which adequate relief, remedial or preventive, cannot be afforded. It is matter of profound satisfaction to the American Bar, that the profession in America has not failed to catch the same progressive spirit. We love to dwell upon the names of Kent and Story, of Dillon and Cooley, whose noble treatises have done so much for our law. Many books are now-a-days issued from the press, but the most of them are little more than digests, useful indeed to the active practitioner who may find in them cases collected in compact form, but sadly lacking in disquisition and taste when compared with the elegant and profound works of the writers I have mentioned. So too, in the reports of that great tribunal, possibly the greatest of any age or country, the Supreme Court of the United States, may be found abundant evidence that equity has found a soil in America favorable in the highest degree for its expansion and growth. And Maryland lawyers have reason to felicitate themselves that Maryland courts have also kept step with the march. No one can read the opinions of the early Maryland judges without being impressed with the fact that they were fully abreast of the times in which they lived. The opinions of Bland, and Johnson are veritable mines, from which the most advanced views may be ex-

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tracted, and when we examine the reports of later days, the countenance of every Maryland lawyer must glow with pride and pleasure, while he dwells upon the able disquisitions of such men as Buchanan, Dorsey, Archer Legrand, Miller and many others. Without this development in America of the principles of a sound jurisprudence, this country, a new land where many novel situations have arisen and many more are yet to arise, could never have swept onward, with triumphant step, to a progress more rapid and magnificent than was ever before seen. I can not here point out the particular instances in which judiciary law has influenced the principles and practices which have guided courts of equity. To attempt this would be to undertake a history of equity jurisprudence. The principles governing the law of injunctions, of receivers, of trusts to a very large extent, and generally of all cases where full and adequate remedy at law cannot be had, have been established without the aid of legislative interference and must be sought for only in judicial precedents. A slight examination of the growth of these rules and principles is sufficient to enable any one to perceive how, with ever expanding scope, they have been applied in novel manner and effect to the shifting affairs of society and business. I may mention one instance, however, for the reason that at our last session, it was brought to our attention in a very interesting paper read before the Association. It was then pointed out how the doctrine of receivership was applied to the affairs of an insolvent railroad corporation in such a manner that not only

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were its assets preserved for the creditors but it was enabled to so perfect its plant as to be prepared ultimately to compete successfully with its rivals. And this was done without invoking any new principle but by a legitimate and logical expansion of old and well-established doctrines.

In view of the nature and effect of judiciary law it seems to be clear that it is difficult to exaggerate its importance, and if this be true it would seem to follow also that to be adequately prepared for the discharge of the great responsibility of promulgating it, there is imperative need for the highest and broadest culture among the members of the bench and bar. As some other persons have done we may deprecate, as much as we will, the fact that judiciary law must be made at all, but we must acknowledge that at the present day it is absolutely unavoidable, as a part of the function of the judiciary. There comes frequently to every bench a condition of fact such as never existed before and will never again exist. No rule can be found that will adequately meet the demands of the situation, and no formulated principle is obtainable from the books that will furnish such a solution of the questions presented as that adequate and complete justice may be awarded. What is to be done under such circumstances? Let me put a case for illustration. When the transportation of freight and passengers changed from the wagon and stage coach dragged by horses to the express trains propelled at high rates of speed by steam, and contracts over short routes had become extended to agreements to carry persons and goods all over the

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world; and by reason thereof there came into existence new and greater perils than ever before were possible, it was plain that the limited rules that had been applied to the stage coach, would not suffice for the railroad. Such needed rules however could not in the nature of the case be adequately supplied in advance by the legislature, from the simple fact that until the working of the new agencies had developed the exact nature of the perils, and also of the relative right and obligations of the parties, no one could foresee with precision what the proper rules should be. The courts, however, have solved the difficulty by applying to each case as it arose the ancient principles of bailment, so amended and modified as the exigencies of the peculiar condition of facts required, in order to preserve and protect the best interests of all the parties and of the public.

From the vast number of such cases have been deduced many general rules, so that there has arisen a new and distinctive branch of the law, which has been created from necessity, not as an usurpation of legislative authority but because it arose from an exigency inseparable from the judicial obligation, to decide rightly between the parties. The same line of reasoning may be applied to every case where the judges can rightfully formulate a new principle. The court does not and cannot express the will of the sovereign by the promulgation of concrete law in which is declared whatever may be commanded or prohibited—that is within the legislative power only. But it does lay down (and by its duty it is forced to do so) new principles, which must be deducible from

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principles already well established. The power to do that, it would seem, must of necessity reside with the court in every system of jurisprudence in which the object and purpose is to do substantial justice in every case. The pretorian edicts of Rome differed from the judiciary law of our time most essentially. The power of making law was given to the pretors, "*adjuvandi vel supplendi, vel corrigendi juris civilis gratia*," but their "edicta" were published in advance, and made to apply to each case that fell under it. The English judge is bound, it is true, by the fundamental principles of the common law, and by the provisions of the statutes, but he administers those principles so modified by justice, equity and common sense, as to furnish to each case a special application, as the facts may exist. The pretorian edict was the production of one man only, though he doubtless profited by the experience of his predecessors, but under our system, no decision or decisions, except in the particular case in which it was rendered, can acquire the force of law until it has received the assent of the profession. I use the words with deliberation, for it is not capable of successful refutation that a decision is nothing more than the expression of the court that uttered it, until it has been acquiesced in by the settled judgment of the profession. But when it has received such approval, and is recognized as being a wise and proper ruling, it forms a precedent to be followed by courts whenever the facts of the case bring it within the reason of the ruling.

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Moreover, the foundations which must underlie this assent are those only that rest upon the dictates of natural truth and justice. Each conscience has graciously been permitted to resort to a reservoir of moral thought for its guidance and control, and it is the concurrence of mind and conscience that constitutes "assent." May I say that? A week ago, I stood upon the beach, when the time was "quiet as a nun breathless with adoration" and the "gentleness of heaven was on the sea." I felt the mysterious power of the ocean as it reposed so calmly before me. The inexorable goaler of all that sinks into its depths; the master of all that floats upon its surface; now full of a soft gentleness but capable of awful energy; fair and wooing in its softer moods, but terrible and cruel in its wrath; unfathomable, boundless, unchangeable and mysterious, is not the sea a fitting type of an eternal, all-powerful, divine intelligence? And may not also that great moral sea, to which every human conscience may resort, and from which alone are to be extracted the eternal principles of truth and justice for the making of judiciary law, be a type (if no more) of the supreme power and intelligence in the moral sphere as is the ocean in physical. That sea is too vast to be measured or fathomed by human intelligence; all that we may do is to explore its caves and caverns and extract now and then a treasure of thought. As unchanging as the natural sea, as boundless as the universe, as eternal as the heavens, it must be the product of a God and must hold the principles upon which are based the decrees of God. A jurisprudence, con-

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structed from materials gathered therefrom, must be as Coke said it was, "the perfection of reason," and we must accept as literally correct, the beautiful and much quoted definition of Hooker, for of such a law it may be truly said, "her seat is the bosom of God; her voice the harmony of the world," and "all things in heaven and earth do her homage."

But the time alotted to me, has about been consumed and I must desist from further taxing your patience. If I have not been wholly in error in what has been said we cannot fail to be impressed with the great dignity of our profession. What a vast responsibility rests upon the craft that has power to conceive and promulgate rules which of necessity affect so vitally our liberties, our property and even our sacred honor. Others have pointed out and dwelt with great pride and satisfaction upon the preeminence of members of the bar in executive and legislative positions and shown that lawyers have had a larger share in the framing of the concrete law of the land, than those of any other profession or calling. But when I consider that the profession is daily and almost hourly engaged in laying down rules and principles by which all the transactions of our people are to be interpreted and given effect to, transactions than concern every relation of life, either public or private, I doubt if the services rendered as presidents, governors or legislators are more important or more durable than those by which are gradually being established those principles which are hereafter to become interwoven with our lives and form important elements in the formation of our national

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and private character. It has been said that the intelligence and morality of a people must be adjudged by the character of its laws, and if this be correct our profession must be careful that it measures up to the demands of the times in which we live. I cannot doubt that upon the legal profession much will depend in the settlement upon humane, enlightened and wise foundations, the many national questions that now perplex the American people. It will be well for us if that should be the case for no class of persons has been more devoted to the essential principles of liberty and right than the lawyers. Freedom of speech, the right to be informed of accusation, trial by jury, no one to be interfered with in his life, liberty or property but by the judgment of his peers, these are principles that have been written in every constitution of the land, but they are inscribed on the hearts of all of its lawyers, and lawyers will always be foremost to defend them. I do not share the apprehensions expressed by some, that dangers may spring from the making of judiciary law, but rather do I believe, that as all history will show, that the general trend of such law is in favor of justice and equity, so the future will prove that no class will furnish more devoted worshipers at the shrine of liberty and justice than will come from the ranks of the American Bench and Bar, and if this be so, judiciary law will ever tend to the establishment of right and justice and the maintenance of civil and religious liberty.

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The President: The next business in order is the report of the Committee on Admission and Election of New Members.

Judge Briscoe: Mr. President, the following gentlemen have been named and approved for membership in this Association:

MEMBERS ELECTED AT THE FIFTH ANNUAL MEETING.

Annapolis.

JUDGE JAMES REVELL.

Ellicott City.

J. MALCOLM DORSEY.

Elkton.

GEORGE A. BLAKE.

Cumberland.

LLOYD LOWNDES, JR.
R. HUGH MCCLEAVE.
JASPER N. WILLISON.
D. LINDLEY SLOAN.
JAMES E. MACBETH.
DAVID AUSTIN ROBB.

Oakland.

JOHN T. MITCHELL.

Salisbury.

E. STANLEY TOADVIN.

Upper Marlboro.

FRANK SASSCER.
JAMES C. ROGERS.

Laurel.

JAMES P. CURLEY.

Baltimore.

E. J. W. REVELL.
BEVERLY W. MISTER.
GEORGE WEEMS WILLIAMS.
ROGER T. GILL.
JAMES W. CHAPMAN, JR.
JAMES A. FECHTIG, JR.

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Mr. Graham: I move that these gentlemen be elected members of the Association.

The motion was put, and carried, and the Secretary then cast the ballot of the Association in favor of the gentlemen whose names are mentioned above.

The President: I take pleasure in introducing Mr. William C. Devecmon, who will address you on

THE WRITTEN CONSTITUTION.

Gladstone is said to have made the remark that "as the British Constitution is the most subtle organism which has proceeded from progressive history, so the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man."

It is not more certain that Minerva did not spring full grown from the brain of Jove than that the American Constitution had no such miraculous or instantaneous origin. It is as much the product of progressive history and of evolution as the English Constitution or any of the existing forms of physical nature.

All social life is necessarily based on contract of some sort, either express or implied. It is scarcely conceivable that human beings could have any intercourse with each other without mutual understandings or contracts. And as the most desirable ingredient of a contract is certainty, and as certainty can hardly be had without writing, it is probable that the invention of the art of writing did not antedate by

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many generations its use for the purpose of expressing and preserving memorials of contracts. While the idea that all organized society must be based upon an agreement of the people composing that society, state or government, doubtless first took definite and practical form in the American Colonies, it requires but superficial thought to see that the criticism usually passed upon Rousseau's Social Contract theory is itself uncritical and unphilosophical. To say that no state ever originated in contract, and that therefore his theory is opposed to history and common sense, is but a begging of the question. It would seem to me that the theory was not meant to relate to the actual process of the formation of society, but was intended to be a mere philosophical hypothesis tending to explain the reciprocal relations of members of the state. No government ever originated by the formal agreement, voluntarily given, of all the individuals within its confines, neither did any government ever exist between which and its citizens or subjects there were not mutual obligations. Man instinctively feels it his duty to preserve and obey his country's laws; and laws constitute a government's obligations towards its citizens. The Magna Charta of King John, the charters granted to towns and guilds or associations of people in particular trades all through medieval Europe, were but a manifestation of the human desire to have such mutual obligations between the government and the people in writing, so as to be permanent, definite, and certain. When, finally, the desire for religious liberty, the independent spirit generated by the

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struggles of emigrants who either voluntarily or otherwise went to establish new homes in foreign countries and lands—when from these and other influences—men began to study the nature of government and came to the conclusion that every just government is based on the consent of its people, which necessarily implies a compact among those people, it could not be long before there arose a desire, an imperative desire, to have the terms of that compact fixed and certain by being reduced to writing. The various charters of the American Colonies made English-speaking people familiar with the idea of a written declaration of rights. Borgeaud in his "Origin of Written Constitutions" states that such instruments are chiefly traceable to "The Agreement of the People" drawn up by Cromwell's soldiers in 1647, the "Instrument of Government" of the Protectorate in 1653, and antecedent to them to the "Fundamental Orders" of Connecticut in 1639; but the more careful study of Fisher in his "Evolution of the Constitution of the United States" would seem to show that these documents, except the last, had little if any influence upon American statesmen.

In 1689–1690 John Locke published his Essays on Civil Government in which the theory of the social contract is advanced, and henceforth the subject became a fruitful study for philosophers and statesmen.

In 1717, John Wise, a minister in Massachusetts, published "A Vindication of the Government of New England Churches," in which occurs the following language: "Let us conceive in our mind a multitude

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of men all naturally free and equal, going about voluntarily to erect themselves into a new commonwealth. Now their condition being such, to bring themselves into a political body they must needs enter into divers covenants:

"1. They must interchangeably each man covenant to join in one lasting society, that they may be capable to concert the measures of their safety by a public vote.

"2. A vote or decree must then necessarily pass to set up some particular species of government over them. And if they are joined in their first compact upon absolute terms to stand to the decision of the first vote concerning the species of government, then all are bound by the majority to acquiesce in that particular form thereby settled, though their own private opinion incline them to some other model."

In 1772, James Otis laid before a town meeting in Boston a declaration stating:

"Among the natural rights of the Colonists are these: First, a right to life; secondly, to liberty; thirdly, to property; together with the right to support and defend them in the best manner they can." These are evident branches of, rather than deductions from, the duty of self-preservation, commonly called the "first law of nature."

"All men have a right to remain in a state of nature as long as they please; and in case of intolerable oppression, civil or religious, to leave the society they belong to and enter into another.

"When men enter into society it is by voluntary consent; and they have the right to demand and

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insist upon the performance of such conditions and previous limitations as form an equitable original compact."

Such are some of the more striking of the documents foreshadowing the actual adoption in practice of the social contract theory of government.

Even before the Declaration of Independence was given to the world, many of the colonies had adopted written constitutions; before the war of the revolution was over, all had done so. Maryland adopted hers in November, 1776, and the first article of the Declaration of Rights prefixed to that document declared "that all government of right originates from the people, and is founded in compact only, and instituted solely for the good of the whole." The Federal Constitution, being the terms of a compact between sovereign states, naturally contained no declaration of the "Rights of Man," to use a term current at that time; but such was the enthusiasm among the people for individual rights and liberties that it was felt that they ought to be set forth in every instrument of government, and their omission in the Constitution of the United States was supplied by the first ten amendments, adopted in 1791. Most of these amendments were copied, some of them almost *verbatim*, from Maryland's Declaration of Rights. They are simply the embodiment of the spirit of the Declaration of Independence. That Declaration, considering the simplicity of its language, though doubtless expressing ideas which were not original with its author but were shared with most of the political philosophers of the period, considering the

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time and manner in which it was published, the influence it has had upon our political institutions, and the influence which these institutions have had upon the rest of the world, must be regarded as the greatest state paper ever penned by man. Upon its doctrines are based our State and Federal Constitutions. The spirit of the people and of the times demanded that the rights of the citizen and the duties and powers of the government and all its branches should be definitely and clearly expressed in writing. And this—the written constitution—was the real revolution brought about by the war for independence; and in view of the political history of the world during the last century it is a fair deduction that the final evolution of all government is the perfection of the written constitution. From this country it spread to France, from France to the balance of Europe, until to-day every state of any consequence on the Continent of Europe, except Russia, has a written constitution; and directly from us the balance of America, and Japan, have adopted it.

The written constitution is the chief glory of the American people—not their successful wars; not their achievements in the sciences; not the products of their inventive genius; not the great men of America in all departments of human activity; not the establishment of a great republic after a successful revolutionary war—other countries and peoples have produced and accomplished all these things—our great achievement, the one thing which stands out prominent in our history, is our written constitution, and giving it greater pre-eminence is the fact

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that it is founded on the social contract theory as annunciated in the Declaration of Independence.

The present generation of Americans has witnessed the origin of a veneration for the flag, as if the possession of such an ensign distinguished this from any other country. Flags have been used from remotest antiquity, doubtless first by commanders of armies; they pertain almost solely to warfare; and it is difficult to understand the extraordinary veneration now paid to the Stars and Stripes upon any other theory than that it is but one of the manifestations of the war spirit now pervading all ranks of American society. We have heard a hubbub about the disgrace of hauling down the American flag, and societies have been formed to keep it floating over all the public schools of the country, but in those very schools the constitution is a dead letter and no patriotic society has raised its voice in protest; laws have been passed in our legislative halls making it a criminal offence to insult the flag by using it in connection with any advertisement; but in those very halls the constitution is sneered at as being antiquated, and is openly insulted as being fit only for the swaddling clothes of a nation, and not suitable for one grown to man's estate; we consider it a great glory to plant our flag in distant climes and over alien peoples, but our constitution and our political institutions must be hid away at home, as being fit only for base domestic purposes.

The flag does not represent the spirit or the glory of this country, it is at best but a piece of bunting, a material thing, which the hand of any rude crafts-

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man can fashion, typical of absolutely nothing that distinguishes American institutions; "Old Glory," some sentimentalists have dubbed it, but to the practical man and to the philosopher, to the business man and the man of affairs, upon whom the practical workings of the government are exerted, and to the statesmen comprehending the genius of government, there can be but one glory of the United States, typifying her institutions, and distinguishing her from all other countries—her written constitution—the foundation of her government, the palladium of her peoples' liberties. It is our real "Old Glory," and if the influence which it has exerted and is exerting upon other countries is a true indication of the trend of events, and of the evolution of social institutions among men, it is destined to be our ever young and never dying glory. I have said the flag is but a piece of colored bunting, a material thing; the constitution is but a piece of paper, but on that paper is impressed the brain and heart of the American people and American institutions; it is dyed in the heart's blood of Sydney and Hampden and every other martyr who has given up his life in resisting tyranny; it is odorous with the brain sweat of Plato and Jefferson, of More and Franklin and every other poet and philosopher who has dreamed and toiled on behalf of human freedom.

That a change has come over the spirit of the American people in regard to their views of constitutional restraints is manifested in a most remarkable degree in the political literature, in the legislation and in the conduct of our law-makers before and

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since the civil war; a change so extraordinary that it cannot be doubted that it could not come to pass in this country, guided as it is by public opinion, unless an equal change had taken place in the temper of the American people. The purpose of this paper is to call attention to this change and to point out in as brief a manner as may be the causes for it, and to urge upon the members of the bar their duty to counteract this growing contempt for constitutional restraints, and their duty to use all their influence, not only to preserve among the people their ancient reliance upon the *form* of government through written charters guaranteeing their rights and liberties, but their duty from time to time to so amend and improve those charters that they shall be, in substance, worthy of the affection and loyalty of the people. In contrasting the old with the present temper of the people towards the merits of the written constitution it will of course be needless to refer to the enthusiasm existing among the "fathers," as they are still lovingly called, who believed they had established an ideal government. It was natural that the generation which had brought to pass a revolution from all previous forms of government, and had put into practical operation what had been a mere dream of sages and philosophers, should be filled with noble enthusiasm for their work, and that their political writings should abound with their political axioms and dogmas, and that in their legislation and political action they should hesitate lest they should overstep the fundamental restraints they had established for themselves.

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As the civil war is a transition period from the old to the new, it will be sufficient to indicate the change by a few striking examples. Perhaps the most noticeable is the change in the character of the platforms of both the great political parties. In the *ante-bellum* period they dealt chiefly in political axioms, showing that the people were mostly concerned with ideas of political rights; subsequently they have dealt chiefly with economic questions, showing that the hearts of the people are more concerned with making money than in preserving political rights. Indeed the *zeitgeist* of the age affecting all nations and peoples and classes of society is commercialism.

Though some state and local conventions had adopted political platforms prior to 1840, the first national convention to do so was the Democratic convention held in Baltimore in that year and nominating Van Buren. Of the nine planks in that platform, seven related exclusively to political faith, and of the other two, one referred to the United States bank and the other simply demanded economy in the administration of the government. These seven planks were repeated and re-adopted in the Democratic national conventions of 1844, 1848, and 1852. Of the three new planks added to the platform of 1844, one was an article of political faith and the other two related to the public lands. Of the fourteen new planks added to the platform of 1848, five related to articles of political creed, one referred to economy in the administration of government, one to the public lands, three to questions growing out of the war with Mexico, two were devoted to extend-

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ing fraternal greetings to the Republic of France, and two to praising the private character and political principles of the party's candidates. Of the thirteen additional planks to the platform of 1852, seven related to questions of economy, United States bank, public lands and relations with Mexico, and the balance were declarations of political faith. The platform of 1856 was practically the same with additional planks relating to the institution of slavery.

The first Whig platform adopted at national convention was in 1844. It consisted of one sentence only, declaring for tariff for revenue with incidental protection and for economy in public affairs. Their next platform in 1848 affirmed that it stands "on the broad and firm platform of the Constitution, braced up by all its inviolable and sacred guarantees and compromises, and cherished in the affection, because protective of the interests, of the people." The other plank related almost exclusively to the career of their candidate, Zachary Taylor. Of the eight planks in the the Whig platform of 1852, seven were declaratory of articles of political faith, and the eighth referred to the fugitive slave law. In their platform of 1856, the Whigs announced their reverence for the Constitution and affirmed that they had "no new platform to establish, but [were] content to broadly rest—where their fathers rested—upon the Constitution of the United States, wishing no safer guide, no higher law." The other planks were concerned with lamenting the growing feeling of animosity between the North and South.

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The first Republican national platform, that of 1856, contained nine planks, three of which were distinctively political in their nature, one was an arraignment of the previous Democratic administration, and the others referred to the admission of Kansas as a state, to rivers and harbors, and the Pacific Railroad.

In the foregoing reference to the party platforms wherever I have stated that planks were political in their nature, I mean that they either announced the party's position on constitutional questions, or were simply declaratory of the fundamental rights of man, being either quotations from, or paraphrases of, the Declaration of Independence.

It will thus be seen that the *ante-bellum* platform was chiefly occupied with announcing the party's belief upon questions of a purely political character, relating to the nature of government, constitutional questions, or the rights of the citizen.

What the platforms of the two great parties have been since the war is doubtless, in a general way, still fresh in the memories of all the members of this convention, and it will be needless to make any special analysis of them here. Suffice it to say, that (not considering the platforms now in issue before the people) excepting a plank in the platform on which General Grant was nominated in 1872, declaring that "the Republican party proposes to respect the rights reserved by the people to themselves as carefully as the powers delegated by them to the state and to the federal government. It disapproves of the resort to unconstitutional laws for the purpose of

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removing evils by interference with rights not surrendered by the people to either the state or national government;" and excepting a declaration in the Democratic platform of 1884, re-affirmed in 1888, that "the preservation of personal rights; the equality of all citizens before the law, the reserved rights of the states; and the supremacy of the Federal Constitution within the limits of the Constitution will ever form the true basis of our liberties," there has not been a strictly political dogma affirmed, or a constitutional question referred to in the platforms of either of the great parties, unless we shall also regard as exceptions the two occasions on which the Republican platforms have referred to the principles of the Declaration of Independence, but they were manifestly intended as partisan references to the position of the negro of the South, rather than as expressions of the political faith of the party; and unless also we regard as exceptions the occasional Democratic expressions of opposition to the centralizing tendencies of the Republican party, and their allegiance to the traditions and principles of their party without stating what those traditions and principles are.

All that I have said about the platforms of the *post-bellum* period applies to that of the Republican party adopted in Philadelphia, in June last, if we except the one paragraph referring to Porto Rico and the Philippines, and as to that I cannot refrain from expressing my opinion that history will regard the principles there annunciated as absolutely repugnant to and subversive of those upon which this government was founded. On the contrary, the Kansas

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City platform of the Democratic party breathes the spirit of the elder day; but it is most remarkable that a convention, which affirmed that our political institutions are at stake in this election, to use their own language, "that the policy of the Republican party abroad will lead quickly and inevitably to despotism at home," should encumber their platform with academic declarations in regard to silver, irrigation of public lands and other questions of a purely economic and commercial nature. To every American citizen who really believes that the issue of despotism or freedom at home depends on our foreign policy, to be determined by the result of the election now pending, all other questions must sink into absolute insignificance.

The difference between the campaign oratory of *ante-bellum* and *post-bellum* times is even more striking. In the former period constitutional questions were continually discussed from the hustings; indeed they were the principal subjects of such discussions; in the latter, economic questions are almost the only ones mentioned; in fact our stump oratory may be said to be now confined generally to statements about the material prosperity or depression of the country under the preceding administration and the promise given of prosperity under the election then pending. Have the American people forgotten that the war of the revolution was fought to preserve political rights, and that our ancestors declared that to preserve such rights governments are founded among men? If, in reality, we have come to believe that governments are maintained to give material

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prosperity to the people, would it not be the part of wisdom in us to amend our system? Certainly, prosperity pertains no more to a republic than to an empire, and it is axiomatic that the cost of maintaining a republic is much more than cost of a monarchical despotism.

Another striking contrast, showing the change that has come over the spirit of our people, is observable in the course of our legislation and in the conduct of our law-making bodies, both federal and state.

All the members of our state and federal legislatures are sworn to support their state and federal constitutions. While doubtless, it cannot be expected under our form of government that every member of our law-making bodies shall be familiar with, or even shall have read, that instrument which he is sworn to uphold, it is to be expected that a legislator of average honesty, who, as a private citizen, would not for a moment think of violating his sworn obligations, will not knowingly perjure himself in this regard. The truth is, the average member of the legislature looks upon this oath as "a matter of form," and he knows that, save to his own conscience, he is unaccountable to any tribunal for its faithful observance, and he can easily relieve himself of all sense of responsibility, on the ground that it is the duty of the judicial and not of the legislative branch of the government to pass upon the constitutionality of legislation.

The extraordinary number of statutes of a socialistic nature designed to protect or benefit particular

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classes, or occupations, that our courts have been compelled in recent years to declare unconstitutional, shows that popular sentiment encourages rather than deters the growing tendency to legislate close to the line of the constitutional limit. That the indifference of our lawmakers to the constitutional limitations is largely, if not entirely, due to the indifference of public opinion, was exemplified by the action of the Fifty-Sixth Congress in the Roberts case. While no one can read the arguments made in the House of Representatives in that case without being impressed by the industry, learning and ability displayed on both sides, it strikes me as rather strange that no one called attention to certain logical conclusions which must follow from their action. If the exclusion of Roberts was based upon the acts of Congress prohibiting polygamy in the territories, and Utah was admitted as a state on condition that she observed those laws, and that such laws prevented a person guilty thereunder from holding a seat in Congress, then it follows that Congress may prescribe new qualifications for membership in the House of Representatives which may be different with every new state that is admitted. If on the other hand Roberts' exclusion is based upon the laws or constitution of Utah, making a polygamist incapable of holding office, then every state can, at its own pleasure, impose qualifications upon members of Congress in addition to those enumerated in the Constitution of the United States. In fact, however, it was not contended or even pretended seriously, that Congress had passed any law making additional qualifications for such membership, either applicable to mem-

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bers from all the states, or applicable alone to the member from Utah. The discussion was narrowed down to the question as to whether Congress, or rather the House alone, has the *power* to make additional qualifications. Now, if the Congress, or the House alone, has such power, it must, of course, be manifested in fixed and established laws, or rules. Congress then sat as judges to declare the law, not as legislators to make laws, or to say what the law should or ought to be. It is not only opposed to all our laws, traditions and customs, but to the very fundamental nature of law, that the judge in passing on the case before him can make laws to fit the case. While, personally, I have no means of knowing the fact, from conversations with some members of Congress, senators and others in position to form a valid opinion, I believe it to be a fact that a majority of those who voted to exclude Roberts did not believe they had the moral right, under their oath of office, to do so, but were constrained because they thought they were acting in accordance with an extraordinary public sentiment. They were simply overwhelmed with letters from sunday school superintendents throughout the country. There was before them a monster petition with seven million signatures, chiefly of school children, of male women, who somehow imagined they were adding to their own reputation for virtue by publicly proclaiming a high standard of morality, and of female men so ignorant of history and of human nature as not to know that it would be better that a hundred Robertses should be admitted to Congress—aye, and should hold seats there—rather than

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the public respect for law and public confidence in the integrity of the administration of the law should be weakened. If the judges of the law sitting judicially do not give willing obedience to the law, if *ex cathedra* they announce their readiness to disregard the law whenever, in their opinion, public exigencies require, and if such action is sustained by the sentiment of the people, then public morality among such people must indeed be at a low ebb. The laws of God, both natural and revealed, all declare that man's first duty is obedience to law.

The history of every nation that has passed through periods of moral degradation, or that has perished through moral disintegration, shows that the first step in national immorality is national contempt for, or disregard of its civil laws. Who has not read Bulwer Lytton's picture of the moral chaos that prevailed at Florence during the time of the great plague, who has not shuddered at that exemplification of the saying "eat, drink and be merry for to morrow we die?" Who has not felt his limbs become clammy, his brain grow dizzy as he read the tale of the Reign of Terror in France? Who has not sickened and felt despondent of human nature, as he read the story of the decline and fall of Rome? Who has studied human nature in books, or in life, and has not been forced to the conclusion that of all God's creatures man is the least disposed to obey His laws? In a state of nature all other animals are obedient to the laws of their being. Whether or not we believe man's free agency is such as to involve moral responsibility for his actions, we must admit that without the sanctions

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of the civil law, organized society would be impossible, and that the habit of voluntary observance of laws made by man, adds to our ability to voluntarily keep the divine laws. Whatever, therefore, tends to weaken our respect for human law tends just so far to weaken our respect for divine law, and is just so far detrimental to our whole moral nature, and nothing is so injurious to a people's morals, as the spectacle of an ostentatious disregard of the law by those in high place and power.

It is not my intention to discuss the burning questions of the hour presented by Porto Rico and the Philippines, but the diverse views we find expressed about the popular phrase "the Constitution follows the Flag," as much as anything I have mentioned, illustrates the change that has come over our people. The power to declare war and make treaties necessarily carries with it the power to acquire territory. But the meaning of every instrument of a public nature, such as the Constitution of the United States, must be gathered from the whole instrument and from the spirit pervading the whole, and from the history of the time when it was promulgated. Can any one doubt that the spirit and genius of our institutions prohibit us from acquiring or holding subject provinces? Can we imagine the men who fought the war for American independence, or the men who then shaped our political destinies, favoring the Porto Rican tariff—even if only fifteen per cent.? The impost duties that our ancestors declined to submit to were infinitesimal. They carried on their desperate struggle to establish the principle involved. When

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we read Senator Hoar's great speech upon the Philippine question and are called upon to compare the present day statesman with the elder generation, when the generous spirit of liberty for all men animated all Americans, who of us does not recall with a sigh Virgil's verse "*quam mutatus ab illo?*"

Goldwin Smith in his "Political History of the United States," after referring to this as the first great republic destined to endure, says, that the republics of antiquity were cities and that when they extended their territories they ceased to be republics. If every American citizen is a king, every Roman citizen was equally so. Shall we be blind to the teachings of history? With subject nations governed by military dictators can we preserve our liberties at home? Or can we, with self respect, or with a decent respect for the opinions of mankind, hold such subjects?

I have given at some length portions of the evidence showing the change that has come over the spirit of our people in their views of our fundamental law. It remains that I should briefly state what, in my opinion, are its causes. We have, during the memory of the present generation, passed through the fiery ordeal of a great civil war. While undoubtedly many virtues are cultivated in the soldier, it is equally undoubted that war is demoralizing to a nation, and especially a civil war. The dogs that are then let loose are afflicted with rabies. Not only does such a war engender a cruelty unknown at other times, but laws guarding the political and

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civil rights of the citizen, whether belonging to the conquering or the conquered party, are silent.

Leaving out of consideration the Emancipation Proclamation and the suspension or suppression of the writ of *habeas corpus*, which popular opinion perhaps in all ages would justify upon the maxim *salus populi suprema lex*, and leaving out of consideration all acts pertaining to what is known as the reconstruction period in the South, which doubtless, in the fullness of time, will be found to have had no permanent effect upon the national character, I come to what in my opinion is the Iliad of our woes—political, economic and social. When a government is established with a written constitution setting out the rights, duties and powers of every department, it becomes a practical necessity that some agent shall be named whose interpretation of that instrument shall be final and conclusive. It is eminently proper that that agent should be the judiciary, and it is the very essence of wisdom and patriotism that a spirit of trust and confidence—aye, of veneration—for the judiciary should be cultivated among the people. Such a spirit is highly desirable among all nations; it is an absolute necessity to the permanence of American institutions, without it the whole fabric of our government must decay and eventually perish. When the Supreme Court of the United States, according to general belief, was packed in order to have the Legal Tender Act declared constitutional, its demoralizing tendency upon the public can scarcely be exaggerated. He who studies the law in order to evade its penalties is a rogue. What can be said of

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a government that deliberately sets its citizens an example of such a course? That the American people did not approve of such a method of evading their fundamental law was proven many years afterwards when one of the great political parties of the country inserted in its platform a plank which could be construed to intimate that this example would be followed in order to have the constitutionality of the income tax sustained, and such an indignant voice of protest was raised throughout the country that the leaders of the party hastened to repudiate such a construction of the platform and to explain that by proper construction that plank was merely a declaration in favor of the justice of such a law and pledging the party to establish it, but only through the regular legal method, by an amendment to the Constitution authorizing it.

My purpose has been to limit my remarks to a discussion of the strictly political phases of our national life. But I cannot refrain from referring here to one of the results, *me judice*, of the Legal Tender decision upon the economic views of the people. It was declared to be within the power of Congress to make money, which to many minds is synonymous with wealth. It is a revelation to men. The primeval curse of God may be avoided by an act of Congress. Congressional action becomes a panacea for all national woes. Such is the seed of socialism!

Though it cannot be doubted that the expression that the Constitution was made to govern only in ordinary times and that in crises its provisions have

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been and must be disregarded, had its origin in conditions prevailing during and immediately after the civil war, it must be admitted that the imperfections of that instrument are so many and the difficulties of its amendment are so great that the statesman who is chiefly occupied with practical results may think himself justified in disregarding what he considers theories, when confronted with actual conditions. When our Federal Constitution was formulated, it was adapted to a rural population of about three millions, scattered along the Atlantic coast. We had, in 1790, only five towns in the whole country having as many as sixty-five hundred inhabitants each, and only two others had as many as four thousand. When we consider the great changes that have taken place, in the physical character of our country, in the social conditions of our people, and in their business relations with one another and with the world, and the enormous growth of corporations and corporate wealth, it becomes a matter of astonishment that an instrument of government drawn up in 1787 is as well adapted as it is to the year 1900; but at the same time it is reasonable to expect that modern conditions should require some changes, and as a matter of fact we know they do. Indeed, some changes have taken place in the practical workings of our government out of very physical necessity. When our post offices numbered less than one hundred in the whole country, the President could personally appoint the postmasters, now, when they number a hundred thousand this is impossible, and the appointments are in reality made by congress-

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men and senators. And the increase in the number of other federal appointments is just as remarkable. Our elective President exercises more power than many of the hereditary monarchs of the world. This power has grown with the growth of the country; it is not suited to the genius of our institutions, nor compatible with the sentiment of our people. The power of the federal judges, whom Jefferson in 1820, termed "a corps of sappers and miners steadily undermining the Constitution," has been so extended as to embrace nearly every subject that is susceptible of litigation. The easy device of a corporation, acting under a foreign charter, is always available. The provisions requiring capitation and direct taxes to be apportioned among the several states according to their population, seem to present under modern conditions an absolute bar to the levying of such taxes. The inability of the President to veto special items of appropriation bills is a continuous source of evil. These last two matters were changed in the Constitution of the Southern Confederacy. That the Federal Constitution is entirely unsuited to present conditions of society is almost universally admitted. With the exception of those states recently admitted, the constitutions of all our states have undergone complete revision, some of them many times, and in some of the states there is a mandatory provision that the question as to whether there shall be a constitutional convention called, must be submitted to the people at regularly stated periods. It is axiomatic that laws must grow. A rigid, changeless instrument of government cannot

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stand for all time. Shall we silently ignore, or by petty tricks or devices evade the fundamental law of the land? Time has been when Pope's dictum "for forms of government let fools contend, that which is best administered is best," found adherents among intelligent people, but to-day no thinking man in the world will agree with him. Though the character of a people largely determines and controls the form of their government, nothing is more certain than the fact that the character of a government reacts upon and greatly affects the character of its people. We must stand by the Written Constitution. We must not evade or ignore it.

Regarding the jurisprudence of Greece, Professor Maine, in his "Ancient Law," says, "the Greek tribunals exhibited the strongest tendency to confound law and fact. The remains of the orators and the forensic commonplaces preserved by Aristotle in his treatise on rhetoric show that questions of pure law were constantly argued on every consideration that could possibly influence the mind of the judges. No durable system of jurisprudence could be produced in this way. A community which never hesitated to relax rules of written law whenever they stood in the way of an ideally perfect decision on the facts of particular cases, would only, if it bequeathed any body of judicial principles to posterity, bequeath one consisting of the ideas of right and wrong which happened to be prevalent at that time. Such jurisprudence would contain no framework to which the more advanced conceptions of subsequent ages could be fitted. It would amount at best to a philosophy

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marked with the imperfections of the civilization under which it grew up." Burgess in his "Political Science and Constitutional Law" also notes this effort among the Greeks to administer moral law in their courts of justice, and to it he ascribes "the poverty and insecurity of individual rights" among them. To the same psychological character that produced this conception of legal rights he attributes their total incapacity for political organization. Referring to modern races, he says, "violence and corruption have always marked the politics of Celtic nations. These are failings on their part rather than positive vices. They spring from the want of political genius rather than from vicious political character. The Celtic nations have always been compelled finally to suffer political organization by foreign talent, and have therefore become subject nations. It would be irrational to dismiss this fact with a phrase of indignation concerning unrighteous spoliation. The Celtic nations were more warlike than either the Roman or the German. Had they possessed fair talent for political organization they would have been irresistible; Italy, France and Britain would to-day be subject to them. Whatever their gift may be, it certainly is not, and never has been, political, and their subjection to politically endowed nations is both natural and necessary. Any other order of things would confound distinctions which are implanted in the psychologic character of nations."

What is political genius? It is simply a profound reverence for LAW. In a nation it manifests itself in political organization. In the individual it is mani-

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fested by a fierce determination to maintain his individual rights. And unless a nation is composed of such individuals its political organization cannot be long enduring. Von Ihering, in his little book "The Struggle for Law," which within six years went through five German editions and was translated into thirteen of the modern languages of Europe, supports two propositions: that every individual ought to maintain his legal rights at all hazards and at all costs—first, as a duty to himself; second, as a duty to society. Some years ago a wealthy citizen of New Jersey, by his will, left a large sum of money to be expended in distributing the works of Henry George; for myself I cannot imagine a more patriotic method of leaving one's money than to the establishment of a fund to place a copy of Von Ihering's work in the hands of every citizen of the United States, and especially in the hands of all of our judges, for every lawyer is painfully conscious that many of his brethren who adorn the bench are by nature disposed to follow the system of the Greeks and to evade or disregard the law in order to do ideal justice in individual cases—to the great detriment of the public at large, to the confusion of the law, and the utter confounding of the legal adviser. In the course of that profoundly philosophical work, the author observes, "the power of a people is synonymous with the strength of their feeling of legal right. The cultivation of the national feeling of legal right is care for the health and strength of the State."

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In history two nations stand out pre-eminent as possessed of political genius; they are equally remarkable for their legal genius. To-day one-half of the civilized world is ruled by the laws of Rome and the other half by the laws of England. Individual rights and political liberties go hand in hand. If the individuals of a nation do not establish and maintain their individual rights, in their organized capacity as a state, they will lose their political rights; and if in their organized capacity they do not maintain their political liberties they must lose their individual liberties.

The individual and political rights of American citizens are inextricably interwoven with their written constitutions. They must be preserved inscribed in the hearts of our people, especially the Federal Constitution, for if it falls, they all fall. That it is, though slowly, losing its hold upon the affections of the American people, I think I have shown, and it must be apparent to all observers. The bar must counteract this growing tendency. To do this successfully the Constitution must be made conformable to present conditions and to the sentiments of the people. Lawyers in all ages and among all peoples have been the champions of liberty. The American Bar must not shirk its responsibility; it is a duty the profession owes to itself. The Constitution must be amended—amended as the Senate amends the House revenue bills—by a complete revision.

The old Articles of Confederation contained this provision: "And the Articles of this Confederation

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shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and afterwards be ratified and confirmed by the Legislature of every State." Yet within ten years a constitutional convention was called at the instance of Virginia, and an entirely new union formed which the States of the Confederation could enter or not, as they saw fit. Under our present Constitution no such revolutionary method of procedure is necessary. Article V of that instrument provides: "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress." The State Bar Associations throughout the country and the American Bar Association should take this matter up, and should make the application for a constitutional convention through the state legislatures. If the conservatives among our people fear that the changes proposed by such a convention would be too radical, let them consider that the day for such a convention, whether for ill or for good, is bound to come, and

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that the longer it is put off the more radical the changes are likely to be.

I suggest this subject to the consideration of the Maryland State Bar Association.

The President: The next business in order is the report of the Treasurer.

TREASURER'S REPORT.

THE MARYLAND STATE BAR ASSOCIATION, *in account with* FRANK G. TURNER, *Treasurer.*

1899.

July 27. To amount received from Moses R. Walter, late Treasurer, ... $ 311.38

To membership dues 1898–99, $3.00 each, received from the following 14 members:

G. L. Vanbibber, A. L. Sharp, Wm. J. Witzenbacker, J. S. Young, J. J. Lindsay, R. W. McMichaels, John G. Wilson, R. L. Lee, J. S. Biddison, George E. Loweree, Phil. H. Chew, Alex. Neill, A. L. Crothers, John L. G. Lee, . . 42.00

To membership dues 1899–1900, $3.00 each, received from the following 311 members:

J. B. Seth, W. B. Trundle, J. A. Pierce, J. P. Briscoe, J. H. Mitchell, Charles H. Quigley, Fred. C. Slingluff, J. J. Hurst, A. H. Boyd, Ferdinand Williams, L. Bernei, B. A. Richmond, J. A. McHenry, J. J. McHenry, Hugo Steiner, M. A. Mullin, Stewart Brown, D. G. McIntosh, Richard Bernard, A. M. Tyson, Thomas H. Robinson,

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Clayton Purnell, J. E. Ellegood, H. T. Lankford, C. P. Lankford, H. C. Kennard, C. H. Knapp, W. C. Devecmon, J. R. Pattison, R. R. Henderson, G. M. Russum, J. C. Motter, A. L. Sharp, G. W. Covington, G. R. Gaither, Jr., Henry Lloyd, M. E. Skinner, J. T. Morris, J. H. Baker, J. S. T. Waters, S. H. Lauchheimer, Allan Rutherford, R. L. Rogers, F. T. Dorton, J. F. Gontrum, N. R. Gill, Allan McLane, D. M. Henning, Robert Burton, Abraham Sharp, E. W. Herman, W. H. Adkins, R. P. Graham, J. C. Lane, W. V. Bouic, G. S. Hamill, C. E. Finks, Wm. Kealhoffer, H. H. Barroll, J. J. Dobler, William S. Evans, Wm. R. Martin, J. W. Miles, Chas. F. Harley, C. B. Tiernan, W. I. Dawkins, P. J. Campbell, J. H. Johnson, John N. Steele, F. N. Parke, Emil Budnitz, J. F. Williams, E. J. Cross, John B. Gray, M. Lehmayer, M. L. Keedy, A. S. Niles, Oscar Wolff, D. G. Wright, E. G. Baetjer, S. C. Houlton, Edwin Warfield, William P. Lewis, Edwin J. Farber, D. K. Este Fisher, John Hinkley, S. A. Williams, R. M. McLane, A. G. Brown, A. Hughes, H. D. Harlan, P. B. Watts, J. M. Ambler, Skipwith Wilmer, H. E. Mann, John S. Wirt, Thomas J. Morris, F. K. Carey, John Warfield, A. H. Taylor, Jay Williams, Gordon Tull, J. H. Ralston, F. A. Thayer, L. M. Haines, Geo. Whitelock, Lawrason Riggs, L. W. Wickes, Charles E. Phelps, Taylor Morrison, John A. Lynch, Thomas W. Simmons, Henry Stockbridge, Samuel J. Harman, John C. Rose, George C. Thomas, David Stewart, M. Gregg, W. S. Bryan, Joseph C. Mullin, Ernest Hoen, L. E. McComas, L. A. Wilmer, DeW. Reynolds, James W. McSherry, John G. Wilson, Samuel D. Schmucker, H. W. Talbott, Henry Page, Buchanan Schley, Lloyd Lowndes, James P. Gorter, Vincent Sebold, Frank Gosnell, Joseph

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Packard, J. B. Bunting, Edgar H. Gans, F. Stone, Joseph C. France, William A. Fisher, William G. Rouse, P. E. Tome, J. A. C. Bond, Charles M. Howard, Thomas A. Whelan, H. L. D. Stanford, C. T. Reifsneider, James M. Munroe, C. A. E. Spamer, G. W. Steele, A. DeR. Sappington, W. S. Thomas, George L. Pearre, R. L. Lee, J. E. Webster, Charles Herzog, A. Leo Knott, A. B. Chancellor, Robert H. Smith, Robert H. Gordon, George W. Smith, Jr., Edward S. Eichelberger, William L. Marbury, J. A. Mason, A. D. Bernard, Thomas Hodson, Charles Marshall, Daniel L. Brinton, W. Irvine Cross, Reverdy Johnson, N. P. Bond, James E. Carr, W. T. Warburton, Michael E. Walsh, C. A. Little, J. W. Thomas, D. J. Blackistone, Norman B. Scott, Charles E. Hill, John M. Reifsneider, Henry J. Waters, G. H. Worthington, J. H. Covington, Wm. T. Brantly, Conway W. Sams, T. Pliny Fisher, Calvin B. Taylor, J. T. Mason, R., J. S. Biddison, David W. Sloane, John P. Poe, Baker Johnson, W. S. McMaster, Albert G. Towers, J. H. C. Legg, J. S. Biddison, Henry J. Broening, William J. O'Brien, Jr., J. Fred. Requardt, William W. Beck, William H. Bayless, Chas. B. Roberts, Nicholas H. Green, George L. Van Bibber, Thomas G. Hayes, C. C. Magruder, Phillips L. Goldsborough, David Fowler, Francis P. Stevens, R. B. Tippett, Charles D. Wagaman, William E. Walsh, Robert F. Brent, Alexander Hardcastle, Leigh Bonsal, Richard K. Cross, William H. Thomas, G. S. Hawkins, William B. Levy, George M. Sharp, Oliver D. Collins, C. H. Warner, O. F. Hershey, A. C. Strite, W. H. Brune, Austin A. Wilson, Alexander Armstrong, Frank I. Duncan, A. A. Doub, R. D. Jones, W. H. Talbott, J. Cookman Boyd, G. M. Upshur, Moses R. Walter, Edward G. Gibson,

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W. H. Dawson, R. M. Venable, Robert Crain, Charles T. Reifsneider, Henry F. Wingert, Frank C. Norwood, Edward C. Eichelberger, Howard P. Sadtler, A. P. Barnes, R. W. Applegarth, George E. Loweree, Charles H. Stanley, Phil. W. Chew, Alexander Neill, J. I. Cohen, M. G. Urner, Alonzo L. Miles, George Savage, Roland B. Harvey, Ralph Robinson, W. H. Perkins, LeRoy Gresham, Thomas B. Mackall, George N. Mackenzie, J. Upshur Dennis, G. Y. Maynadier, P. A. Bowen, D. M. Reese, T. F. Hisky, Elmer Cook, Elihu S. Riley, J. F. Parran, G. C. Merrick, H. B. Dillehunt, Thomas S. Baer, Thomas I. Elliott, Frank G. Turner, John J. Donaldson, P. C. Henninghausen, James W. Denny, Alexander Robertson, John D. Urie, Fred. W. Story, E. J. Griffin, Frank V. Rhodes, Harry M. Clabaugh, Fred. R. Williams, Frank L. Stoner, Fred. R. Owens, James W. Owens, Wm. P. Maulsby, Jr., Henry R. Lewis, James J. Lindsay, Hammond Urner, Charles F. Holland, R. H. Bussey, Ashley M. Gould, John G. Rogers, William Grason, Edward C. Carrington, W. H. Claude, John F. Gontrum, John S. Young, William H. Deweese, F. Marion Fauble, Edward O. Weant, Charles W. Heuisler, William J. Witzenbacher, N. C. Burke, George L. Thomas, A. L. Crothers, R. W. McMichael, George R. Willis, A. A. Piper, John L. G. Lee, J. Roger McSherry, David N. Henning, ... $ 933.00

$1,286.48

To membership dues for 1900–1901, $3.00 each, from the following 2 members:

Fred. W. Story, George R. Willis, ... $ 6.00

Total Receipts $1,292.38

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DISBURSEMENTS.

By Banquet Tickets, Messrs. Munson, Ford and Medairy, ... $	12.00
By Expenses to Ocean City of C. LaRue Munson, ...	26.00
By Conway W. Sams, Expenses to August 1, 1899, ...	56.12
By W. G. Olmstead, Typewriting, . . .	5.00
By Donaldson & Harbaugh, Typewriting	1.10
By Expenses to American Bar Association of George Whitelock, ...	39.00
By Hanzsche & Co., Printing, ...	8.15
By Guggenheimer, Weil & Co., Books, .	3.75
By John S. Bridges, Printing, ...	5.75
By John Hinkley, Postage, ...	2.26
By Fidelity & Deposit Co., Treasurer's Bond, ...	10.00
By Stamps, ...	2.00
By Typewriting, ...	.75
By Jas. E. Wilkinson, Stenographer, . .	36.50
By Conway W. Sams, Stamps, ...	29.15
By John S. Wirt, Expenses to American Bar Association, ...	50.00
By J. F. W. Dorman Co., Rubber Stamp,	.60
By Postage, ...	6.00
By W. J. C. Dulany Co., Sundries, . .	11.82
By Hanzsche & Co., Printing Annual Reports, etc.	252.50
By Stamps, ...	5.00
By Sinclair-Farber Printing Co. . . .	3.95
By Postage, ...	3.00
By Conway W. Sams, Stationery, Stamps,	64.85
By Stamps, ...	3.00
By Hanzsche & Co., Printing, ...	5.40
By Postage, Fifth Notice, ...	1.50

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By Donaldson & Harbaugh, Typewriting,	1.25	
By Postage, ...	2.00	
By Hanzsche & Co., Printing, ...	19.50	
By Conway W. Sams, Expenses to July 2, 1900, ...	54.90	
		$ 722.80
Balance in hands of Treasurer, July 23, 1900, ...		$ 569.58

Audited and found correct with proper vouchers, and cash balance of $569.58 in hand, as stated.

ROBERT R. HENDERSON,
JOHN HINKLEY,
Auditing Committee.

The President: Gentlemen, what is your pleasure in respect to this report?

It was moved that the report be accepted, and referred to the Auditing Committee.

The motion was put, seconded, and carried.

The President: The next order of business is the report of the Committee on Judicial Administration and Legal Reform.

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REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION AND LEGAL REFORM.

A former committee in a legislative year, in presenting its report to this Association, established the precedent of giving a summary of important changes in the Statute Law of the state. This precedent commends itself to the judgment of the present committee for biennial observance.

The legislature of 1900 passed a number of acts for improvement of practice and procedure which will be acceptable to the bar. Partnerships and incorporations of parties to cases before justices of the peace and upon appeals therefrom need not be proven, unless denied in writing, in which case a reasonable continuance is allowed for proof (Ch. 11). Corporations hereafter incorporated, doing business in several counties, may be sued in any county in which they do business or in that county in which their certificate of incorporation is filed. This is an extension of a similar provision in the Acts of 1894 as to trust companies. The same amended section also very properly excepts conductors of railroads from the provision allowing service of process upon persons selling tickets (Ch.21). Answers and other pleadings of corporations in equity no longer require a seal (Ch. 73). The provisions allowing the defendant to take a rule security for costs against a non-resident plaintiff are extended so that where one or more plaintiffs are residents the rule may be laid against the non-residents. It is also extended to include resident assignees of non-resident plaintiffs (Ch. 382).

Jurisdiction of justices of the peace in civil actions, which was in 1898 extended to actions involving not exceeding two hundred dollars, is now restored to one hundred dollars (Ch. 302). Final adjudication upon the facts in the record, judgment and execution may now be had in the Court of Appeals upon judgments at law reversed by that Court instead of the

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case being remanded where the parties so agree in writing (Ch. 367.) The jury law is amended so as to permit the court in cases of sufficient importance to cause the grand or petit jury which may have been discharged to be reconvened (Ch. 62). The provision of the Act of 1894, Ch. 185, for special findings of facts by the jury is now repealed (Ch. 641). The Supplement to the Code, published in 1898, by Mr. John Prentiss Poe, is legalized, as evidence, but not as superseding the codified statutes (Ch. 43). Orphans' Courts may ratify any sales of real or leasehold property without an order *nisi* where the parties are *sui juris* and give their consent to immediate ratification (Ch. 74). The provision for appointment by the court of a special surveyor, in cases where the county surveyor is prejudiced, is extended to include his illness or other disqualifications, to be shown to the satisfaction of the court (Ch. 581).

On motions to quash attachments where testimony is required, either party may require the testimony to be taken orally in open court (Ch. 139). Garnishees are given the right to pay funds in their hands into court to be awarded to the party entitled to the fund (Ch. 138). An unfortunate muddle is made in an act intended to amend the attachment law in reference to claimants of property attached, so that upon filing a bond the property shall be delivered to the claimant. By a curious error in punctuation the act as printed is nonsense and gives the property to the claimant *in case he fails to establish his claim* (Ch. 697).

A modification of the statute of frauds is made so that a guarantee of the debt of another need not show the consideration in writing (Ch. 362). Ordinances of cities or towns may be recited in indictments by number only without being set out in full (Ch. 131). Writs of *habere facias possessionem* may now be issued not only against the original debtor, but against his "widows" or heirs who are parties to the proceedings (Ch. 310). Type writing machines are recognized by two acts, one of which provides that type writing shall have the same effect as writing except as to signatures (Ch. 598) and the other

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authorizes the use of such machines by clerks of court, when approved by the judges (Ch. 126).

Under political reforms a most important act was one regulating the practice of legislative attorneys and legislative agents before the general assembly, commonly called the Anti-Lobby Act. It requires each attorney or agent employed by anyone to promote or oppose legislation at Annapolis, to register with the Secretary of State, giving the purpose of his employment and the party by whom employed. The employer is likewise required to register the names of his attorneys or agents and the subject of legislation to which the employment refers. The act also requires the filing with the Secretary of State of an itemized statement of expenditures incurred in the promotion of or opposition to legislation. This act is in great measure modeled after a similar statute of Massachusetts, which is said to have worked well, with an additional provision giving the Governor power, in case he has reason to believe money has been improperly used in connection with any bill, to require a statement of expenditures in connection therewith, before approving such bill (Ch. 328). Employers are required by another act to give their employees time to vote, not exceeding four hours, the employer being allowed to designate the time (Ch. 71). Certificates of nomination must now be filed twenty-five days before election instead of twenty days (Ch. 366).

Two constitutional amendments are proposed to be voted upon in November, 1901, for the re-apportionment of representation in the general assembly. One gives the following basis of representation of counties in the House of Delegates according to population: under 18,000 two delegates; under 28,000 three delegates; under 40,000 four delegates; under 55,000 five delegates; over 55,000 six delegates; Baltimore City to have four districts, each having a representation equal to the largest county (Ch. 432). The other provides for a senator from each of four districts instead of three in Baltimore City (Ch. 469). The section of the election law relating to advertising of lists of judges and clerks is amended and

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an error in the Act of 1898, Chapter 142, is cured with regard to publication in newspapers of opposite political faith (Ch. 464).

The law of torts has remained almost unaltered by this year's legislation. One act which may be noted under this head extends the operation of the statute imposing damages upon owners of dogs proved to have killed sheep, so as to make it apply to any owner, keeper, or harborer of such dog (Ch. 275).

The subject of the frailties of attorneys at law has received consideration. One act prohibits solicitation either directly or through agents of the clientage of persons confined in jails, under a penalty of suspension from practice for a year, and fine or imprisonment of the agent (Ch. 13). Another act disqualifies from practice in the Orphans' Courts, attorneys who have been disbarred by the Supreme Bench of Baltimore City or by the Circuit Courts of the counties, and it is made the duty of the Judges of the Orphans' Court to prefer charges before the Supreme Bench or the Circuit Courts against attorneys guilty of unprofessional conduct (Ch. 309). A third act prohibits by fine or imprisonment anyone not regularly admitted as an attorney at law from receiving any fee or other reward (Ch. 699). Another act makes it embezzlement for any executor, administrator, guardian, committee, trustee, receiver or any other fiduciary, to appropriate to his own use any money or other valuable thing which has come into his hands in such fiduciary capacity and makes such embezzlement punishable by imprisonment in the penitentiary for from one to five years (Ch. 22). The provisions for filing bonds upon the happening of a contingency upon which the active duty of a trustee depends have beed amplified (Ch. 114).

The attentive students of the history of civilization in a community may learn much concerning its prevailing vices by an examination of its criminal statutes. Thus we find that citizens of this community are now forbidden to win any money or other thing not only by "the thimbles" or what is called the "little joker," or by any other device or fraudulent trick whatsoever, but also by dice, or the game commonly called crap, on penalty of fine or imprisonment or both (Ch. 348). It is a

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misdemeanor to sell any calf less than three weeks old to any butcher or to "any person to be butchered," though having made the purchase the butcher or the "person to be butchered" may apparently kill the calf and sell the meat with impunity (Ch. 672). Apple barrels are required to be of a standard size (Ch. 373). The inspection and anaylsis of feed stuffs is provided for and packages must be marked so as to show their contents (Ch. 287). Fine and imprisonment are provided for him who sells "sophisticated," (whatever that may mean) adulterated or unwholesome milk (Ch. 459). The sale of condensed and preserved milk is also regulated (Ch. 532). The oleomargarine laws are repealed and re-enacted in a more vigorous form, with a saving clause, however, allowing the sale of oleomargarine if duly announced to the unwary purchaser by a conspicuous placard bearing the inscription in plain Roman letters, not less that four inches in length, "Oleomargarine sold here." But "any person who asks, sends or inquiries for butter" is to have butter and nothing else. The rights of patrons, guests, boarders and inmates of hotels, eating houses, restaurants, cafes, places of entertainments, boarding houses, public and private hospitals, asylums, schools and penal institutions are carefully preserved; for though the new law permits the serving of oleomargarine therein "free from coloring or any ingredient to make it look like yellow butter," yet this can only be done upon oral notice to each guest, patron or inmate, and a sign must be displayed on each and every side of the room where the article is served, in plain Roman letters, not less than four inches in length, "Oleomargarine used and served here" (Ch 496). "Sterling silver" is defined as 925/1000 fine, and "coin silver" as 900/1000 fine; and fine or imprisonment or both are provided for the sale of articles stamped as sterling or coin silver, but not of the standard fineness (Ch. 398).

A presumption of fraud is raised in favor of creditors of the seller in all cases of sale of a portion of a stock of merchandise, except in the regular course of business or a sale of an entire stock of merchandise in bulk, unless an inventory is made out

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five days before the sale, giving the names of parties from whom the goods were acquired and the prices paid, and all creditors are notified, personally or by registered mail, of the proposed purchase. The restrictions imposed by this act, including others besides those enumerated, are so burdensome as to far outweigh the mischief of the fradulent practices intended to be suppressed (Ch. 579).

The punishment for forgery is changed from imprisonment in the penitentiary for from five to ten years to imprisonment in the penitentiary from one to ten years. This act is an illustration, of which there are unfortunately many examples, of the overlooking of an amending statute passed since the code, namely: the Act of 1890, Ch. 550. As the text of the code was followed instead of the Act of 1890 the forged endorsement of a promissory note is apparently unprovided for (Ch. 590). The secrecy of telegraph and telephone messages and the obligation to transmit them is extended to include operators and clerks employed by individuals as well as by corporations (Ch. 610).

A most humane act is one allowing any agent or officer of the Maryland Society for the Prevention of Cruelty to Animals to cause any diseased or disabled animal that may be abandoned to be appraised and put to death (Ch. 456). Any officer of the Maryland Society for the Prevention of Cruelty to Animals is authorized to make arrests on his own view (Ch. 462).

The law forbidding dredging in the Potomac River is modified so as not to apply to riparian owners or persons with whom they make written contracts dredging in waters outside of the channel (Ch. 577). A large number of amendments are made to the oyster laws (Ch. 380). The section of the article upon Crimes and Punishments relating to disturbances of the peace and obstruction of highways is extended to railroad stations and disorderly solicitation at such places (Ch. 285). Willful trespassing is made a misdemeanor, punishable before a justice of the peace, by fine not exceeding one hundred dollars with the right however of appeal within ten days (Ch. 66). Hunt-

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ing with gun or dog upon the lands of another, without leave, is punishable by a fine not exceeding twenty-five dollars—with a similar right of appeal (Ch. 419). It may be noted as examples of hasty legislation, which is unfortunately too frequently shown in our statutes, that the appeal in the first of these two acts as to offences in Baltimore City is to the Circuit Court and not to the Criminal Court, and in the other that there is no appeal in Baltimore City at all.

There are three statutes amending the game and fish laws. One relating to terrapin no longer confines its beneficent provisions to diamond back terrapin but extends them to skilpot and sliders (Ch. 435). Another statute relates to the obstruction of fisheries in the Susquehanna River and the Head of Chesapeake Bay (Ch. 611), and a third to the trapping or killing of otter, mink, raccoon or muskrat (Ch. 371).

The subject of legislation against ground rents marks an interesting development of the public sentiment against perpetual land tenures. The act of 1884 made all rents thereafter created for a longer period than fifteen years liable to redemption in gold coin, at six per cent. after fifteen years, without notice, with a provision allowing an agreement for redemption at a capitalization of not exceeding four per cent. The act of 1888 made all rents created subsequent to the passage of that act, upon leases for a longer period than fifteen years, redeemable at any time after ten years, upon six months' notice, at six per cent. And now we have an act of 1900 making all rents upon leases over fifteen years, redeemable after five years, at six per cent., upon one month's notice (Ch. 207). In connection with the redemption of ground rents a most convenient act allows the Orphans' Courts to authorize the guardians of infants owning ground rents, as to which the right of redemption has accrued, to execute a deed to the owner of the leasehold upon payment of the redemption money (Ch. 570). Another very important extension of the jurisdiction of the Orphans' Courts authorizes them to direct a sale of personal estate, not only for the payment of the debts of the deceased but also upon application of an

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administrator or executor whenever it shall appear that a sale is advantageous to the persons interested in the estate (Ch.605).

Several acts relate to the protection and education of children. The law of *habeas corpus* with reference to them is amended by giving any court of record or justice of the peace larger powers in reference to committing minors to juvenile institutions for care and guardianship (Ch. 306), and also by another act defining the powers of such institutions (Ch. 316). The disposition of or employment of children under fourteen years of age, for acrobatic or circus or similar performances or as beggars or street musicians, is prohibited under penalty of fine or imprisonment (Ch. 334). The admission of pupils in public schools unless vaccinated is prevented, and provision is made for a vaccine register and for vaccination of children when necessary (Ch. 337). The office of State Superintendent of Public Education is created and his duties are defined. This act repeals and re-enacts Section 71 of the Public Education Article of the Code, without noticing the act of 1898, Chapter 221, the effect of which is to abolish the holding of "Teachers' Institutes" (Ch. 428). The use of bituminous coal in school houses is prohibited (Ch. 520). Another act is intended to prevent the commission of larceny by children and prohibits the purchase from any child under sixteen years of age of any hardware, plumbing, gas or electric fixtures, tools, household utensils, books, ornaments, jewelry, poultry or animals of any kind, unless such child is accompanied by parent or guardian or some adult person known to the purchaser who shall certify that such articles were honestly acquired (Ch. 739).

The law of husband and wife is amended by three statutes. One amends the section relating to leases made to married women by striking out the words requiring the rent to be ninety days in arrear before distress may be levied (Ch. 135). A second authorizes either husband or wife to relinquish their interest in real estate of the other through an agent appointed by a power of attorney executed either jointly or separately (Ch. 105). And a third provides that a married woman may

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contract with her husband or form a co-partnership with her husband or with any other person or persons as fully as if she were a *feme sole*, and may be sued upon her contracts, partnership or otherwise (Ch. 633).

A new section added to the usury law prohibits the exaction upon chattel mortgage loans of more than the legal rate of interest and a fee for examination and valuation of property and preparing, executing and recording of papers, of five dollars on loans not exceeding fifty dollars; six dollars on loans exceeding fifty dollars and not exceeding one hundred dollars; five per cent. on the excess to one thousand dollars, and two and one-half per cent. on the excess over one thousand dollars. Splitting up loans to increase the fees is prohibited and the offense is punishable by a fine of five hundred dollars for the first offense and a like fine and imprisonment for thirty days for each subsequent offense, besides forfeiture of the entire amount borrowed and annulling of the mortgage (Ch. 404).

The section in reference to the mortgagees' oath denying the prepayment of taxes was amended in 1898 by two different acts. The better of these acts is retained and the other repealed. It will be noted that the act repealed is that bearing the higher number and so presumably the later act, although both of them bear the same date of approval. This repealing statute nullifies the requirement of an oath upon the Holy Evangely which the last act of 1898 made necessary by reason of its being passed after the general law changing the form of oaths. It also makes it clear that no oath is required upon assignments made since March 30th, 1896 of mortgages made prior to their date, all of which is a most interesting example of hasty legislation taking effect from the date of its passage (Ch. 81). Mortgages and assignments of mortgage defectively sworn to since March 14th, 1898 are made valid (Ch. 656).

Defectively acknowledged, deeds, mortgages, bonds of conveyance and bills of sale recorded since 1858 are made valid (Ch. 3). Sales made by trustees who have given bond with only one surety are made valid (Ch. 123). Attorneys at law

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and their authorized representatives and clerks are given the right to examine papers, records and indexes without charge (Ch. 26). The sanction of the state is given to the purchase by the United States of land for forts, magazines, arsenals and fortifications and means are provided for condemnation (Ch. 67).

The time-honored one hundred and sixteenth section of the chancery article of the code, authorizing sales for partition, has been amended by the addition of a clause allowing mortgagees of undivided interests to be made parties and protecting their rights in the distribution of the proceeds (Ch. 265). In creditors' bills for the sale of real estate, funeral expenses not exceeding three hundred dollars are made a preferred claim, but the proper amount of such allowance is left to the court's discretion, according to the circumstances of the deceased (Ch. 390). The preference of purchase money mortgages as against judgments or decrees previously existing against the purchaser is extended so as to enure to the benefit of third parties lending portions of the purchase money as well as to the vendor (Ch. 393).

Growing crops are exempted from the operation of mortgages of real estate or of chattels real, except as to liability for distraint in case of a special rental agreement between mortgagor and purchaser made after sale (Ch. 457). An owner of mortgaged real estate may bring an action of ejectment notwithstanding the mortgage against any person other than the mortgagee (Ch. 559).

Several important acts were passed in reference to corporations. One extends the powers of telegraph companies by enabling them, in addition to extension and consolidation, to acquire the franchises of other companies at judicial sales (Ch. 267). Another renders void after two years the charters of all corporations which do not actually begin business within that time from the granting of their charters. This act gives corporations heretofore incorporated six months from June 1st, 1900, before the law becomes effective as to such corporations and contains a provision for keeping alive

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such charters by the payment of an annual tax of one-eighth of one per cent. upon their capital stock (Ch. 272). A third allows insurance companies, trust companies, and other similar corporations to deposit first mortgage bonds of electric railway companies with the State Treasurer, subject to the approval of the Board of Public Works, with provision for an increased deposit or substitution of other securities in case of depreciation, upon ten days' notice (Ch. 212). The provision requiring life insurance companies to deposit securities to the extent of one hundred thousand dollars with the State Treasurer is extended to include health insurance companies (Ch. 660). A section is added to the corporation law, authorizing any railroad to acquire, own and hold, pledge, sell or otherwise dispose of, and to endorse, guarantee or assume the stocks, bonds, and other securities of other railroad companies of this or any other state and of any inland coast or ocean transportation companies (Ch. 217).

Another act requires all industrial, educational, medical, humane, military and charitable corporations receiving state appropriations to report annually, on or before February 1st, how the amount appropriated has been expended, and prohibits expenditures in the purchase of land or the erection of buildings without express authority (Ch. 239). Provision is made for a board of seven commissioners to revise the laws relating to state banks, savings banks, fidelity and trust companies and building and loan associations (Ch. 454). The special provision for the incorporation of the vestries of parishes of the Protestant Episcopal Church, under the Act of 1892, is repealed (Ch. 450).

Biennial inspection of tobacco warehouses by the Governor or his representative is provided for (Ch. 111). Additional inspectors of tobacco are also provided for and reports to the Comptroller are required (Ch. 231). A constitutional amendment is proposed fixing the salaries of States Attorneys and their assistants (Ch. 185). The provision for State Commissioners on Uniform State Laws is extended (Ch. 194). Additional clerical force is provided for the Commissioner of the

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Land Office; he is given twenty-five per cent. of the fees and the provision for payment to him for indexing is repealed (Ch. 318). The state tax rate for public schools, free school books and for the sinking fund is re-adjusted (Ch. 500).

A number of changes are made in the law relating to the national guard (Ch. 657). All appointees to offices, except such as require special knowledge or training, are required to have been residents of the state for at least twelve months, and of the county in which they are appointed, for at least six months (Ch. 356).

The new profession of Public Accountant is recognized by an act which provides for examinations, and an added dignity is given by the authorized use of the letters "C. P. A." to be affixed to the accountant's name (Ch. 719). Insurance brokers are defined, and some changes made in the law with regard to the business of such brokers, and other regulations in regard to them, overlooking the fact that a definition had been made by the Act of 1896, Ch. 266, which act also repealed the sections now amended (Ch. 740). The giving of commissions or rebates to a person insured or to any unauthorized insurance agent is prohibited (Ch. 512). Insurance companies are required to conduct their business in their own proper name and all policies or contracts must be headed with the name of the company (Ch. 744).

The power of physicians to issue burial permits is taken away and provision is made instead for deputy health registers and the scale of fees is amended (Ch. 431). Important changes are made in the laws relating to insane paupers by giving jurisdiction to the county commissioners for the counties or the Supervisors of City Charities for Baltimore City to commit, upon the certificate of two physicians instead of requiring an inquisition by court and jury. The right to such inquisition is preserved however, if demanded by the alleged lunatic, or considered advisable by the commissioners or supervisors. If the lunatic is able to pay a sum towards his support he may be classed as a reimbursing patient. No

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physician's certificate is valid more than thirty days after examination (Ch. 603).

The use of bicycles as a means of travel is further facilitated by an act providing for a Board of State Sidepath Commissioners with power to construct bicycle sidepaths and to obtain revenue from licenses for the use of the same (Ch. 658). The charging of toll upon bicycles and other similar vehicles propelled by human muscles is prohibited (Ch. 549).

Some acts of minor importance remain to be mentioned. One requires mechanics' liens upon boats to be re-delivered after recording (Ch. 28). Partial releases of mortgages are exempted from the law requiring mortgages with a release endorsed upon them to remain in the clerk's office (Ch. 542). Another act extends the duty of clerks to send abstracts to the Commissioner of the Land Office so as to make the requirement extend to mortgages, releases, and leases, as well as to deeds, and requiring the judges to punish the clerks for failure to comply (Ch. 427). Another repeals, *except as to eighteen counties enumerated out of the twenty-three*, the act of 1898, which appropriated one-half of fines and forfeited recognizances, to the purchase of court libraries, a most awkward and roundabout way of passing a law so as to effect the other five counties and the City of Baltimore (Ch. 23). The power of administering oaths in school matters is given to county school examiners and assistant examiners as well as to the commissioners (Ch. 389). Another act strikes out the requirment that the office of the Insurance Commissioner shall be at Annapolis and increases his bond from twenty thousand dollars to fifty thousand dollars (Ch. 700).

From this brief summary it will be seen that there is much general legislation of value and comparatively little deserving serious criticism.

Your committee must place on record its strong disapproval of the custom of making acts take effect from the date of their passage. This provision may be in some cases wise and in others necessary, but ordinarily there is no reason for doubting the wisdom of the constitutional intent, that except in extra-

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ordinary cases, an interval of three months should elapse from the adjournment of the legislature until the acts become effective upon June 1st. Take for instance the section of the tax law of 1896, relating to the oath of mortgagees, introducing a most serious change, and rendering invalid, except as between the parties, any mortgage to which the oath is not appended. Yet this law was enacted to take effect from the date of its passage and many errors were made by members of the bar who had failed to observe by a careful perusal of the daily papers that a radical change in the law had been made since the preceding day or the preceding week. Of the one hundred and seven general laws which have been above referred to seventy-two, or two-thirds, took effect from the date of their passage and thirty-five, or one-third, are without this provision and consequently take effect on June 1st.

This leads us to another criticism, the delay in the publication of the acts. That acts should be passed which without strong reasons are made to take effect on the date of their passage, is bad enough, but that four months should elapse after the adjournment of the legislature before the acts are officially printed is intolerable.

Your Committee recommends to the Association the passage of the following resolutions:

Resolved, That the Maryland State Bar Association expresses its disapproval of the practice of inserting in acts of the legislature, except under extraordinary circumstances, of provisions for taking effect at any other time than on June 1st, the date fixed by the Constitution.

Resolved, That this Association regrets the unreasonable delay in the publication of the official edition of the acts for three or four months after the adjournment of the legislature and urges that steps be taken to secure such publication not later than May 15th.

And Resolved, That the Committee on Judicial Administration and Legal Reform be charged with the duty of bringing both the above matters to the attention of the legislature of 1902.

Your committee, as directed by the Association at its last meeting, has given some consideration to the serious and growing evil of local legislation. The matter was so fully

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discussed by the committee of last year that the present committee feels that it can add nothing in the way of pointing out the mischiefs complained of. Three remedies commend themselves to the judgment of the committee:

(1) To give additional powers to county and city authorities, withdrawing certain matters of local concern from the consideration of the general assembly of the state.

(2) To require notice of proposed local legislation by publication for a prescribed period before the meeting of the general assembly, such publication to be made in the newspapers of the locality or localities to be affected.

(3) To give more thorough consideration, by a disinterested committee, to local bills when introduced.

The first two remedies probably require constitutional amendments.

With regard to the third remedy it seems to your committee that something may be accomplished by the legislature by the formulation of different rules of procedure for the disposition of local bills when introduced. The introduction and easy passage of local bills is largely due to the fact that such bills are referred to a local committee, of which the member introducing the bill is generally one, and in the absence of interest on the part of other members of the committee the bill is very apt to be favorably reported and passed by reason of the fact that the member introducing the bill is alone active in the matter, while the other members of the committee do not give it serious consideration. Your committee recommends, not as a complete solution of the matter, but as a step towards it, the passage by the Association of the following resolutions:

Resolved, That in view of the increasing number of local acts passed by the legislature and the pernicious effect in many cases of such local legislation, the Maryland State Bar Association respectfully recommends to the legislature that such acts be referred to a standing or special committee, upon which committee the member or members from the county affected by the proposed local legislation shall be disqualified from serving in the consideration of the proposed local legislation, provided, however, that

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this disqualification shall not apply to local legislation relating to the City of Baltimore.

And Resolved, That the Committee on Judicial Administration and Legal Reform be charged with the duty of bringing this resolution to the attention of the legislature of 1902.

NOTE.—The portion of this report relating to legislation in 1900, has been carefully revised by the chairman since the presentation of the report at the meeting, and acts not included by reason of the late publication of the laws have been inserted.

The President: Gentlemen, what is your pleasure with respect to this?

Mr. Henderson: I move that the report be received and that the resolutions therein be adopted.

Mr. Riley: I move that the resolutions be taken up separately.

Mr. Dawkins: I second the motion.

Mr. Sams: (Reads resolution).

Resolved, That in view of the increasing number of local acts passed by the legislature and the pernicious effect in many cases of such local legislation, the Maryland State Bar Association respectfully recommends to the legislature that such acts be referred to a standing or special committee, upon which committee the member or members from the county affected by the proposed local legislation shall be disqualified from serving in the consideration of the proposed local legislation, provided, however, that this disqualification shall not apply to local legislation relating to the City of Baltimore.

Mr. Stanley: I move to amend that by striking out the proviso.

Mr. Hinkley: The resolution was drafted in that form at the suggestion of one of the members who

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had served in the legislature and it seemed to him and to me that the exception should be made in favor of legislation affecting the city, because frequently legislation might come up where some practical knowledge would be necessary and I don't think that the city local bills should be referred to a committee composed entirely of members of the counties. After the city legislation I don't think the committee should be composed entirely of city members, but I think a mixed committee would be the best.

Mr. Wirt: I don't think that even if the amendment suggested should be adopted I could vote for it. As I understand it proposes to refer to a city committee all local legislation. There are an enormous amount of local bills every session of the legislature and many ways have been suggested to get rid of the evil. Many come there whose only justification in being there is to introduce some local bill. It might perhaps have the effect of stranding a great many local bills.

Mr. Richmond: Wouldn't that be a good thing?

Mr. Wirt. I don't think it is a practical resolution.

Mr. Poe: There will be no session of the legislature until 1902. This subject now before the Association is one of great practical difficulty and I don't see the necessity of committing the Association to any definite course, but think the further discussion should be laid over until next year.

The resolution says there shall be a "standing committee." What sort of a standing committee?

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Is it to be composed of members of several counties? It occurs to me, with great deference, that the resolution has not been as carefully considered as the importance of the subject requires; we could adjourn a decision until next year, I therefore make the motion that the further discussion be postponed and the committee shall still further consider the matter.

The motion was put, seconded, and carried.

Mr. Sams: (Reads resolution).

Resolved, That the Maryland State Bar Association expresses its disapproval of the practice of inserting in acts of the legislature, except under extraordinary circumstances, of provisions for taking effect at any other time than on June 1st, the date fixed by the Constitution.

Mr. Richmond: That seems to refer to acts that might go into effect in the future. I move to amend the resolution by stating that it is inexpedient to pass any law before the time fixed for its execution and to change the words "any other time than on June 1st," to "before June 1st."

Mr. Henderson: I move that the resolution be adopted as amended.

The motion was put, and carried unanimously.

Mr. Sams: (Reads resolution).

Resolved, That this Association regrets the unreasonable delay in the publication of the official edition of the acts for three or four months after the adjournment of the legislature and urges that steps be taken to secure such publication not later than May 15th.

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Mr. Richmond: It seems to me that should be amended by striking out the word three and putting in four, five or six months.

Mr. Ellegood: Why not say simply "unreasonable delay?"

Mr. Hinkley: I am willing to amend the resolution by say saying three or four months. About four months would be safe.

Mr. Ellegood: I move to say "unreasonable delay," without specifying three or four months.

Mr. Poe: I think I have had greater familiarity with the subject than some of my friends. We know that one of the requirements is, that before the laws shall be printed, they shall be copied, and the printer prints them from copies which are furnished to him. We all know that the great bulk of the legislation is done in the closing or last weeks of the session and the Governor signs the bills after the legislature has adjourned. Before the state printer can print the laws, he must receive certified copies which have to be prepared under the direction of the Governor. All this takes a great deal of time. And when we bear in mind that more than seven hundred laws were passed, and that the book will contain fourteen hundred pages, and before it can be ready for distribution, there must be prepared an index, we will realize there are practical difficulties in the way of the very early printing of the laws. I would deplore too much criticism against the printer under the circumstances. The delay is unfortunate, but still there

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are some allowances to be made, and I think that if we simply express our regret we would perhaps get as good results, and stimulate the printer.

Mr. Hinkley: I disclaim any criticism on the public printer. I simply say that a delay of three or four months is unreasonable and would like to have it remedied. I don't intend to throw any blame on the printer but the system is wrong and we know it. There are several ways of remedying it. The general acts might be printed separately or might be printed in a temporary form. I think the resolution should pass.

Mr. Ellegood: I accept the suggestion of our learned friend, Mr. Poe. I move to strike out the words three or four months and simply say "unreasonable delay."

The motion was put, but was decided in the negative.

The President: The question then arises upon the adoption of the resolution as amended.

The motion was seconded, put, and carried.

Mr. Sams: (Reads resolution).

And Resolved, That the Committee on Judicial Administration and Legal Reform be charged with the duty of bringing both the above matters to the attention of the legislature of 1902.

On motion of Mr. Poe, the resolution was adopted.

The President: The next business in order is the report of the Committee on Grievances.

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Judge Russum: The Committee on Grievances have had a very restful year, with absolutely nothing to do. We think it is a matter of congratulation as well to the Association as to the committee.

The President: The next order of business is the report on Legal Education.

REPORT OF COMMITTEE ON LEGAL EDUCATION.

To the Maryland State Bar Association:

Article XI of the Constitution of this Association directs this Committee to examine and report upon any proposed changes in the system of legal education, and also to examine into the practical working of the present law in relation to the admission of members of the bar, and to make such suggestions in relation to the same as the Committee shall deem advisable.

In pursuance of this provision your Committee begs leave to make the following report:

As the members of this Association are aware, a radical change was made in 1898 in regard to the admission of members of the bar by the act creating a State Board of Law Examiners. This is the method which has been adopted in all the progressive states of the Union, and within the past year a permanent organization of the State Boards of Law Examiners of the various states has been effected. An annual conference of these Boards will be held in connection with the section on Legal Education of the American Bar Association. Such an organization will give valuable opportunity for advice and interchange of views, and if the conferences are generally attended, will contribute much towards the movement, now well developed throughout the country, for the elevation of the standards of admission to the American Bar.

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We assume that the members of the Association are familiar with the provisions of our present law and of the rules passed by our Court of Appeals regulating admissions to the bar. These provisions are set forth in detail in the report of this committee to the Association in 1898.

Four examinations have been held by the board under the provisions of the Act of 1898. The total number of candidates examined was seventy-two, of whom nine were rejected and sixty-three were passed, as follows:

November, 1898, seven candidates, all passed.

June, 1899, nineteen candidates, three rejected.

November, 1899, eleven candidates, all passed.

June, 1900, thirty-eight candidates, six rejected.

It may be added that of the three candidates rejected June, 1899, two applied at the November examination, 1899, and the other at the June examination, 1900, and all three passed creditably.

Owing to the provisions of the Act of 1868, exempting from its provisions all students who had matriculated in the law schools of Baltimore prior to January, 1898, the number of candidates has so far been small, but from this time on all the graduates of these schools will be required to take the State Bar examination.

As to the character and methods of the Maryland State Bar examinations, a most admirable statement was made by Benjamin A. Richmond, a member of our State Board, at the conference of State Boards of Law Examiners at the meeting of the American Bar Association, at Buffalo, New York, in August, 1899, which is printed in the proceedings of that Association for the year 1899.

At each examination there are three sessions of three hours each. At each of these sessions twenty-five questions are submitted in writing. This makes seventy-five questions covering the whole fifteen subjects specified in the rules of the Court of Appeals. Each paper of twenty-five questions is valued at a total of one hundred, and as a rule the candidate who makes two hundred points out of three hundred

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receives a favorable report. But the same value is not given alike to all subjects. In the last examination elementary law was valued at ten, contracts at forty, wills and administration of estates ten, corporations fifteen, evidence twenty-five, torts twenty, criminal law fifteen, real estate fifty, personal property twenty, equity twenty-five, domestic relations ten, pleadings and practice in law forty, international law five, constitutional law ten, and legal ethics ten.

Not only is a different value attached to each subject, but to each particular question, and these values are fixed before the examinations begin. By this method a fair and impartial investigation of the knowledge of the applicants is secured. The examinations are entirely written, and no recourse is had in any event to an oral examination, as is the custom in some of the states.

So far we think the present law has worked satisfactorily. The expense of its administration has probably been greater than was anticipated. The fees received, twenty-five dollars from each candidate, have been barely sufficient to pay the expenses, including the *per diem* of ten dollars per day for the examiners. The cost of advertising the notice of the time and place of examinations and the *order nisi* in the Baltimore City papers has been very considerable.

No provision is made in our law as to what general education shall be required of applicants. The time is not far distant when every one who is a candidate for admission to the bar will be required at least to have a high school education. Perhaps we are not quite ready for this in our state. Meanwhile, the present Board of Law Examiners has the following notice printed at the head of each examination paper:

"Expression, grammar, spelling, punctuation and penmanship will be considered in making the papers," and their rule has been not to pass candidates whose papers show illiteracy, unless exceptionally good in other respects.

Experience under the Maryland law shows, without exception, that those who have had the advantage of a good general education pass the best examinations.

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The effort has been made by the present board to gradually raise the standard of admission to the bar in Maryland. The first examination in November, 1898, was comparatively easy, consisting for the most part of definitions. Each succeeding examination has been more thorough until it is believed that a standard has been reached which will compare favorably with that of the most progressive states. Copies of the questions of the June examination of 1900, are filed with this report for the information of such members of the Association as may care to examine them.

The attention of the members of this Association is called to the following provision of the present law in Maryland: "no one shall be examined who shall not have studied the law in a law school in part of the United States, *or in the office of a member of the bar of this state*, for at least two years."

We are informed that in some parts of the state the practice prevails of the members of the bar giving certificates to young men who have never spent a day in the office, but who simply borrow the law books and read law nominally under the direction of the attorney who gives the certificate. This is a plain violation of the letter and spirit of the statute.

We fear that one of the main difficulties in raising the standard of admission to the bar, so far as moral qualifications are concerned, is the ease with which certificates can be obtained from many members of the bar. This is a matter, however, which is now exclusively within the discretion of the Court of Appeals, who may, in a proper case, require more satisfactory proof of good moral character than such certificate.

In the opinion of your Committee, the present law has been satisfactory, except that the requirement of three years' study as originally proposed by this Association should be obtained, if practicable, by amendment to the present law. Many of the states require three years' study as a qualification for admission to the bar, and a large number of the law schools of the country require three years' study as a condition of graduation.

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Your Committee, therefore, recommends the passage of the following resolution:

Resolved, That the Maryland State Bar Association recommends to the General Assembly of Maryland the passage of an amendment to the law regulating admissions to the bar, providing that three years' study, either at a law school or in the office of a member of the bar of this state, shall be required as a necessary qualification for admission to the Bar of Maryland.

Mr. Fink: I move that the report be received and the resolution adopted.

The motion was put, seconded, and carried, unanimously.

Mr. Henderson: I move that the Association adjourn.

The motion was seconded and the Association adjourned.

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SECOND DAY.

The President: The Association will kindly come to order.

Gentlemen of the Association, I take great pleasure in introducing Mr. Adrian H. Joline, who will now deliver the Annual Address, on

RAILWAY REORGANIZATIONS.

The honor of an invitation to address a body of representative lawyers of a great state is one which no man can receive without a sense of grateful appreciation. In most instances he is rejoiced to think that perhaps something which he has said or done in the course of his professional life may have attracted some attention or aroused some interest. But on the present occasion the lawyer who appears before you is wholly unaware of anything in the annals of a quiet existence which has entitled him to the privilege of addressing the Association of the Bar of the State of Maryland. You must not regard his expression of conscious unworthiness as merely formal or conventional, for it is sincere. The ordinary, practicing attorney who has seldom strayed from the seclusion of an office into forensic fields or parliamentary paths may scarcely hope to be able to impart anything in

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the nature of information or of instruction, anything of interest or of value, to the men who are the legitimate descendants of Daniel Dulaney, of Charles Carroll, "the barrister," and of Samuel Chase, and who trace their professional lineage through Luther Martin, William Pinkney, Roger Brooke Taney and Reverdy Johnson. But it was not easy to resist the temptation to desert for a season the hot and stony streets of a metropolitan city in order to enjoy, if only for a brief period, the charm of the companionship of lawyers who have not suffered the sordid trade-spirit of modern times to dull the brightness of their professional escutcheons and who have preserved so effectively the dignity of professional traditions. Not unfamiliar with the honorable history of the bench and bar of Maryland, asserting a right as a brother lawyer to share in the pride which you must feel in the record of your noble past and your successful present, I ask, and I am sure that I shall receive, your kindly indulgence.

In considering what I may, with your permission, present to you, and mindful of the fact that I can hardly expect to add anything to your store of knowledge or to suggest to you anything which has not already been fully mastered and comprehended by every one of your number, my thoughts naturally turn to that department of our profession with which circumstances have united to give me a certain familiarity—the department of corporation law. I assume that the speaker of to-day is to talk about some topic connected with the jurisprudence of our country, however dry and juiceless it may be; and I

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may perhaps be pardoned for saying that I do not know of any subject so extremely dry and so absolutely juiceless as the one which I have resolved to select. Yet there is an interest about it, a contemporaneous human interest, for it touches our pockets as well as our brains.

During the present generation corporations have assumed a degree of importance greater than has ever been attained by mere business organizations. Questions affecting corporate enterprises have become, legally and socially, among the most interesting of our time. The concentration of wealth in the hands of men who control these artificial personalities has seriously affected the course and conduct of modern life. The American lawyer, trained in the study of the rules which govern civilized countries, finds himself face to face with serious problems which not only involve the interests of those for whom he serves as a paid counsellor, but which affect him in a much broader and important relation—the relation which he bears towards the community in which he is, or ought to be, an adviser, a guide, a leader and an effective force.

It will not, however, in my judgment, be fitting on an occasion like this to enter upon a consideration of the advantages or disadvantages of the growth of corporations or to endeavor to measure the probable effect of these powerful financial combinations upon our national prosperity or upon the ultimate happiness of our people, particularly at a time when the approach of a Presidential election has drawn the subject into the domain of parties and of politics

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"where wise men fear to tread." We are not likely to arrive at just or accurate conclusions in the midst of the stress and storms of partisan struggles.

I shall speak to you, therefore, only upon some features of technical law which relate to a single class of corporations—our railways—and which pertain to what are known as "railway reorganizations."

The wonderful development of the railways of the United States during the latter half of the present century has resulted in adding a new department to our systems of finance and jurisprudence. While this new department embraces corporate properties of every description, it derives its importance mainly from its relation to railroads. Railway reorganizations have come to be familiar things. The term "reorganization" may be subject to criticism, for it is not always accurate. As a rule, neither the railway nor the corporation, nor the affairs of the corporation, are "reorganized." A transfer of the corporate property to a new corporation whose evidences of debt and shares of capital stock are distributed under some plan, whereby the creditors, and sometimes the stockholders, of the formerly existing company are permitted to receive interests in the assets of the new company, is a transaction which may be more appropriately regarded as a compromise, settlement or adjustment; although there are instances arising under the statutes of some of the states, and even, as in the case of the Texas Pacific and the Chesapeake and Ohio Companies, and of Maryland's great historic railway, the Baltimore and Ohio Company,

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where there has been, by consent of all, a voluntary reorganization, or, more properly, a "recapitalization." Still, it is a comprehensive and expressive term, and the public have adopted it, just as they have adopted the absurd misnomer of "trusts," as applied to the great industrial and business combinations of the day. The tendency of the people is to crystallize in a word or phrase some concept or idea which presents itself to them in an undefined and chaotic way, and they choose their symbols without much regard for scientific accuracy.

When the American people began to build railroads, they at once discovered the utility of the corporation, with its capital divided into shares; and not long afterwards they also learned the advantages to be derived from the creation of a bonded debt secured by mortgage. In substance, I conceive that the reason for the introduction of the mortgage as distinguished from the English debenture was that the construction of a line of railway in a growing and expanding country like our own was largely an experiment. The capitalists whose money was to be furnished hesitated, with the characteristic timidity of capital, to put themselves in any other category than that of secured creditors; while the projectors, with the characteristic daring of projectors, were willing to take the risk of the enterprise and to represent their contributions of energy, skill and ingenuity of device by shares of stock, from which, if successful, they would derive generous profits. It was then believed by the simple-hearted banker and lawyer that a first mortgage on a line of railway afforded to

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the bondholder a security bearing some analogy, both as to the nature of the lien and the method of its enforcement, to the security afforded by mortgages upon city lots, or farms, or other classes of real property. We have since been instructed by wise and learned jurists that the banker and the lawyer were wholly mistaken. They did not know the law. As they were bound to know it, there is no excuse for their error, according to a well-known maxim. This we shall see later on when we consider some questions affecting the priority of liens.

From the primordial types of share capital and mortgage bonds developed all the bewildering creations of second and third mortgages, prior lien mortgages, general mortgages, income mortgages, terminal mortgages, consolidated mortgages, collateral trust mortgages, extension mortgages, refunding mortgages, first and second, cumulative and non-cumulative, preferred stocks, voting trust certificates —the list grows to stupendous proportions, but it is known to the investors, wary and unwary, of America, of England and of the Continent. Naturally, with all this effective machinery, came insolvency. At first the procedure was simplicity itself. The trustee of the mortgage went into court, or resorted to the ordinary summary power of sale, and foreclosed the equity of redemption of the mortgagor. The stock, to use an expression more forcible and familiar than elegant, was "wiped out." That was the end of it. The unsecured creditor retired to his place of business, charged the debt to profit and loss account, and endeavored to make up his loss by over-charging

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the successor company. The stockholder went into the market to find some more bargains, hoping by a lucky stroke to "average." But is was not long before there came into the minds of stockholder and of general creditor a sense of the infinite capacity for delay which is afforded by our judicial system. The road to a decree of sale became less smooth and easy. Then, too, it was not uncommon that the men who owned largely of the mortgage bonds also held largely of the shares of stock about to be rendered valueless. Moreover, broad and liberal business views began to prevail, and it was seen that, as the trouble usually came from the lack of cash resources, it would be only just, and would also tend to aid the bondholders in performing what was often a difficult and burdensome task, if unsecured creditors and stockholders should be permitted to contribute towards the cash requirements of the new corporation, and thus effect some salvage. Out of all these things, and perhaps others which need not be enumerated, grew up the modern railway reorganization, often involving millions on millions of values, the fortunes of the rich, the savings of the poor, the prosperity of thousands of human beings, and even the welfare of communities; to the solution of whose problems some of the greatest men in politics, in finance, at the bar and on the bench have given the most arduous labor, the highest forces of their intellects, and in some instances their very lives.

It is not my purpose to consider reorganizations which are effected by the consent of all the parties in interest, or by a valid voluntary sale of the corporate

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assets to a new company. These do not often present legal questions of much difficulty. In such cases, as in all reorganizations, the persons who assume to deal with the subject are bound to consider the condition of the property, the amount of money needed to render it profitable and productive, and the probable earnings and income which may reasonably be expected from its operation under new conditions. They must also consider the relative values of the existing obligations and stock issues, in order to arrive at a fair distribution of what may, for brevity, be called the new securities. When these practical business matters have been arranged and the assent of creditors and stockholders obtained, the legal process becomes a mere matter of machinery. It is the reorganization through the process of judicial sale which has the principal interest for the lawyer. It would be inappropriate to present anything in the nature of a treatise, for the subject is far too comprehensive. I propose only to comment briefly on some of the legal incidents of such reorganizations.

In the first instance, where all the creditors and the corporation are not acting in unison, the aid of the courts must be invoked for the purpose of preventing the dismemberment of the properties, the waste of assets and the destruction of values which would result from a seizure under various writs and processes at the suit of creditors struggling for preference in a race of diligence.

In the early days of railway foreclosures, as we have observed, the trustees of the mortgage were

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accustomed to institute their suit and to make an application for the appointment of a receiver under the well-known rules applicable to mortgaged property. But in course of time it was found that circumstances often rendered it necessary to take prompt action in advance of default in the payment of interest or of principal.

Here we come to the first striking anomaly in the administration of equitable rules as applied to railways. Again and again the courts have declared that simple contract creditors of a corporation who have not reduced their claims to judgment and who have obtained no express lien are not entitled to ask for the seizure of the debtor's property and its application to the payment of their debts; and even where the statutes of the state permit such a proceeding in the state courts the federal courts will not recognize it, because "the line of demarcation between equitable and legal remedies in the federal court cannot be obliterated by state legislation" (150 U. S., 378, 379). Yet we find that, somehow, within the past decade at least, a half dozen great railway systems have passed into the possession of receivers upon bills filed by complainants without judgments, without express liens—stock-holders, bond-holders whose bonds were not in default, general creditors; and where, as in some instances, the assertion of a lien upon income has been made, it is palpably an ingenious device to bolster up an insufficient pleading.

The action of the courts in facilitating such proceedings for the supposed protection of railway properties affords a marked instance of the tendency of

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judges to introduce into our jurisprudence new rules and principles where it is believed that the interest of the public demands a variance from precedents. When a railway company is in financial difficulties and foresees disaster the managers of the property are fully aware of the existing danger long before open insolvency occurs. The scheme of permitting some creditor having a valid claim to enter a judgment and thereupon, on a creditor's bill, with the assent of the defendant, to obtain the appointment of a receiver of the property, was once a favorite one. But this method of procedure was found sometimes to be of doubtful efficiency; and in one instance the federal court in Missouri appointed a receiver of the property of the Wabash, St. Louis and Pacific Railway Company upon a bill in equity filed by the corporation itself against its mortgage creditors. This action was afterwards affirmed by the Supreme Court of the United States.* The grounds upon which the courts assume to proceed in such situations are concisely stated by Judge Shipman in the case of the New York and New England Railroad Company (19 Federal Reporter, 633). He says:

"I am of the opinion that when a railroad corporation, with its well-known obligations to the public, has become entirely insolvent and unable to pay its secured debts, unable to pay its floating debt and unable to pay the sums due its connecting lines, unable to borrow money, and in peril of the breaking up and destruction of its business, and confesses its inability,

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* Central Trust Company *vs.* W., St. L. & P. Rway. Co., 29 Federal Reporter, 618–623.

Railroad Co. *vs.* Humphreys, 145 U. S., 95, 96, 114.

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although no default has as yet taken place upon the securities owned by the orator, but a default is imminent and manifest, a case has arisen where, upon a bill for an injunction against attacks upon the mortgaged property, and a receivership to protect the property of the corporation against peril, a temporary receiver may properly and wisely be appointed."

And in referring to the Wabash case Chief-Justice Fuller says:

"We have already seen that the theory of this bill was that an insolvent railroad corporation may, in the public interest and for the benefit of all its various creditors, surrender its property to a court of equity, to be preserved and kept in operation until it can be disposed of according to the several private rights concerned."

Realizing, undoubtedly, that the public nature of railway property constitutes a slender basis for entertaining jurisdiction of a bill filed by the corporation itself or by a simple contract creditor, the Supreme Court has brought forward the consideration that while the corporation might have objected to the jurisdiction and to the appointment of a receiver, yet its express consent waives the defense, and, as the administration of the assets of an insolvent corporation is within the functions of a court of equity and the parties are before the court, the court has power to proceed with such administration.*

A learned and eminent lawyer of Massachusetts, when president of the American Bar Association, took occasion some years ago in his address to that body to criticise such proceedings severely, and con-

*Hollins *vs.* Brierfield Coal and Iron Co., 150 U. S., 371, 380.

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tended that they were usually collusive, that they were without any proper legal basis, and that they invariably resulted to the disadvantage of the lawful creditors of the company. While the views of Mr. Storey are entitled to great respect, yet I cannot help thinking that his judgment was somewhat influenced by an unfortunate experience to which he had recently been subjected, where he conceived that a serious wrong had been done to his clients through the action of one of our federal courts.

After describing a bill of complaint of the character to which reference has been made, he says:

"In brief, the representatives of the debtor ask that the creditors be deprived of that to which they are entitled, in order to preserve for the debtor property to which confessedly it is not entitled. * * * To disguise the naked effrontery of this position the bills have generally alleged that the public interest will suffer from the disintegration of the system, but if the public interest did not prevent the making of the contracts it should not prevent their enforcement, even if it were possible under the Constitution for courts to take private rights for any such shadowy public use and without any compensation. Practically, however, it may be doubted if there is any foundation for this claim, which certainly has never been established after argument, for no opportunity to litigate it has been given."

In this statement Mr. Storey seems to have gone a little too far. The jurisdiction of the courts to take possession of railroads and appoint receivers in advance of foreclosure proceedings is well established in this country by decisions in the several circuits as well as in the Supreme Court. Mr. Storey did not, perhaps, anticipate the utterance of our highest trib-

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unal which affords a reason for such and some other decisions, *viz*: that "all judicial proceedings must be adjusted to facts as they are" (174 U. S., 682). He overlooked the fact that "railroad mortgages are a peculiar class of securities" (100 U. S., 605). He did not remember that "foreclosure proceedings of mortgages covering extensive railroad properties are not necessarily conducted with the limitations that attend the foreclosure of ordinary mortgages" (174 U. S., 682). In other words he failed to appreciate the truth that in dealing with railways, especially *extensive* ones, the settled rules of law and practice may properly be disregarded, and the courts are not to be hampered by precedents or authorities. Possibly, small and unimportant railways are still to be governed by the ordinary rules. I am reminded of a distinguished Federal judge who once told me that he would decline to entertain jurisdiction of a case where the railroad was less than one hundred miles long. In that instance, however, it is only just to say that the remark was a playful one, and that it was not intended to be preserved for the benefit of posterity.

But while Mr. Storey is mistaken in denying the power of the court to do such acts as it may consider to be necessary for the preservation of a railway, without regard to precedent, yet there is much justice in his remarks with reference to the selection of receivers. It is true that the receivers of the property of such corporations should be men of the highest character and ability, and as impartial as the lot of humanity will permit. Yet, it is not easy to estab-

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lish any general rule which will adapt itself to all cases. One eminent Federal judge, who has recently retired from the bench, always declined to appoint a receiver who had been directly connected with the management of the railway, and yet there are instances where it is for the benefit of creditors as well as of stockholders that the receiver should be a man familiar with the management of the particular property. The evils of which Mr. Storey complains are somewhat exaggerated by him. To the credit of our Federal judiciary, it must be said that instances of improper appointment of receivers are extremely rare. On the whole, the course recently adopted by Judge Lacombe, in the case of the Third Avenue Railroad Company, is doubtless the most prudent one, and it is to be hoped that it may be followed by judges in all the circuits. In that case a temporary appointment only was made, and all persons interested in the property, whether as creditors or stockholders, were invited to appear on a day appointed in the order, with the right to be heard on the question whether the receivership should be continued, and also as to the person who should be receiver. While it may be true that the security holders are usually scattered and unorganized, yet it must be a very extraordinary case where a sufficient number cannot be brought together, under the summons of a court, to prevent the appointment of an improper person, or, at all events, to obtain the appointment of some satisfactory associate receiver.

The fact that mortgaged lines of railway very commonly extend through many states and many

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judicial districts sometimes occasions serious difficulty and confusion. It is manifest that some one court must assume control of the litigation and of the property; but the organization of our Federal Courts, where these proceedings are usually conducted, is such that the Circuit Court of one district is wholly separate and distinct from the Circuit Court of any other district. The practice of filing a bill called "a principal bill" in one district and "ancillary" bills in other districts was disapproved and held to be irregular and improper by Mr. Justice Harlan in a well-considered opinion (39 Fed. Rep., 337). Hence came the unseemly contentions of the several courts in the case of the Northern Pacific Railroad, where three or four sets of receivers struggled for the possession of the property, to the lasting injury of the unfortunate bondholders and shareholders. It was not until the Justices of the Supreme Court, in a somewhat informal and, perhaps, a summary fashion, interfered to quell this judicial turmoil and controversy, that order was evoked out of chaos and the scandal swept away. It is clear that either judicious legislation should be secured or that some controlling decree of the Supreme Court should be obtained to prevent a repetition in the future of this undignified and inexcusable strife of judges for patronage and power. I refer to the Northern Pacific case as a striking example. There have been other cases, and unless some wise action to prevent it shall be taken by Congress or by the court of final jurisdiction we shall again and again be subjected to similar experiences, which can result only in bring-

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ing discredit upon our courts and disgrace to the administration of justice.

When the railway had passed securely into the possession of the court, the prospective reorganizers encounter the problems connected with the debts of the receiver and with the attempts of general creditors to obtain a preference over the mortgage liens.

Every one is familar with the "receiver's certificate." So far as it is a mere evidence of indebtedness, entitled to payment only out of the income of the property, it is undoubtedly harmless, and the authorization of such certificates is a legitimate exercise of the power of the court in the protection and preservation of the trust fund in its hands. But usually the court directs that the indebtedness evidenced by the certificates shall constitute a first lien upon the entire property, income and franchises of the corporation, and relegates the first mortgagee to a secondary position. It has been well said by a wise and prudent commentator that this dangerous power, unlimited by any statute or constitution, by the exercise of which the solemn obligations of the mortgage contract are impaired and a large portion of the mortgage security diverted, cannot be sustained upon any just principles of legal reasoning. Yet this power is so well established by authority that its existence is no longer open to question. The legislatures of our states, who are supposed to be exponents of the people's will, must perforce respect contract rights, but the chancellor is under no such obligation.

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The attempt is usually made, and sometimes successfully, to obtain the consent of the mortgage creditors to this displacement of their security. As in most instances it is impracticable to procure the consent of the holders of the bonds, it is sought to bind them through the act of the trustee of the mortgage.

It has been suggested in essays, monographs and addresses on several occasions that the trustees of corporate mortgages are in a measure indifferent to the obligations of their trusts; that their representation of bondholders is nominal only, and that they are frequently more inclined to accede to the wishes of the debtor corporation, by whom they were originally appointed rather than to serve the interests of the owners of bonds for whom they are trustees. According to my observation, these criticisms are unjust. There may be cases where individual trustees—and by that term I mean natural persons and not trust companies—have allowed themselves to be used as the instruments of the persons interested adversely to the bondholders, but trust companies generally are extremely careful to preserve in every practical way the rights of the holders of the bonds. The difficulties which surround them are scarcely appreciated either by the courts or by the public. As a rule, the trustees occupy solely a trust position, and are not owners of the bonds themselves. The security holders are scattered, they know little of the situation of the property, and they are unknown to each other. When the trustee is summoned by the court to show cause why an issue of receiver's

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certificates should not be authorized, and is told by counsel for the petitioner or for the receiver, or frequently by the judge himself, that such an issue is necessary to maintain the integrity of the property, or to put it in safe order and condition, or to make repairs which are demanded by the public interest, or to complete construction work, what is the trustee to do? Time is not afforded to ascertain the wishes of the bondholders, a difficult task at the best unless the powerful aid of the court itself is invoked to call the bondholders before it. If the trustee opposes the petition he is forced into a controversy, which is usually distasteful to the court, and, moreover, may be in the end injurious to the property. If he asks the court to defer action until investigation may be made, he is told that the matter is pressing and must be decided at once. On one occasion the trustee was informed by the judge that it might object if it chose, but that the certificates would be issued notwithstanding any such objection. The judge acted wisely. He had made up his mind that the necessity existed; he was protected by the judicial panoply, and he did not attempt to avoid responsibility by imposing it upon a trustee having no such protection.

But the most amazing exercise of the power of the court in this regard may be found in what is known as the Illinois Midland case (117 U. S., 434), where the trustee of one of the prior mortgages never received any notice of the application, and was not a party to the suit. The receivership was instituted under a judgment creditor's bill, and afterwards foreclosure bills were filed which were consolidated with

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the creditor's suit. No order was entered in the foreclosure suits appointing the receiver. Eighteen different series of receiver's certificates were issued in order to pay claims of almost every conceivable character. All these certificates were decreed to be prior liens upon all the property of the company, and it was held that the consent of neither the bondholders nor of the trustee was necessary, because they knew that the road was being operated by the receiver, and although the interest on the bonds was in default they had not instituted proceedings to enforce the mortgage.

The conclusion cannot be resisted that some salutary restrictions should be placed on the exercise of this extraordinary power, and respect for vested contract rights demands that such rights should not be destroyed without ample investigation and full opportunity to be heard on the part of all persons having an interest in the fund. It is not difficult to give public notice by advertisement of the intention to consider the question of the creation of receiver's prior-lien certificates, and to afford to bondholders, shareholders and general creditors an opportunity to present to the court all the considerations bearing upon the subject. This was the method of procedure suggested by Judge Lacombe in the Third Avenue Railroad case, and it is worthy of imitation.

A more serious question arises with respect to the payment, in preference to the mortgage bonds, of debts incurred by the mortgagor for labor performed and for materials and supplies furnished prior to the receivership. Here again the Federal courts have

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established the doctrine that in the exercise of their equitable powers they may displace the mortgage lien and apply the funds properly belonging to the mortgagee in order to pay and discharge the claims for labor, equipment and material, as well as car rentals, and even fees of counsel.

The state courts have been reluctant to go to the same extent. In New York, when it was sought to provide for the payment of labor claims by giving them a preference over mortgages—a request seldom, if ever, refused by a Federal court—the Court of Appeals said:

"The argument in its support is that the value of the mortgage lien has been enhanced by the labor of the workman. It is easy to see that under such a plea the lienor might be entirely defeated, and the foreclosure of his mortgage rendered inoperative and useless. Such a result, except upon his consent, the courts have no power to sanction" (103 N. Y., 245).

But the public character of railroad corporations is again invoked to sanction the substitution of what some judge or set of judges may think to be for the public benefit, in place of that "collection of principles to be found in the opinions of sages, or deduced from universal and immemorial usage, and receiving progressively the sanction of the courts" (Kent, Lecture xxi.), which we call "the law." It cannot be denied that much may justly be said in favor of the protection of laborers, servants and materialmen under certain conditions, even at the expense of the mortgagee. The argument of Judge Caldwell in the Kansas City, Wyandotte and Northwestern case (53

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Federal Reporter, 182)* is certainly a vigorous and forcible exposition of his long-established conviction that the rights of the holder of a railway mortgage bond have priority over no other rights except those of stockholders. Whatever may be said of his reasoning, which seems to be a remarkable medley of good sense and nonsense, we are compelled to recognize the fact that the Federal courts, after a fashion and in a shifting, vague and uncertain way, do about what they please in arranging the order of payment of railway debts.

The just cause of complaint which we are entitled to present to the judges of the courts is that no settled rules have been established by which we may test the right of a general creditor to a preference over the bondholder. Judge Caldwell's rule, that all general creditors are entitled to such a preference, has the merit of being comprehensive, but it is not followed by any other jurist, except possibly by Judge Hanford, of the District of Washington, and the Supreme Court has done little more than to tell us that it will act as the particular circumstances of the case seem to require.

One may search the reports from Fosdick *vs.* Schall (99 U. S., 235) to Lackawanna Co. *vs.* Farmers' Loan and Trust Co. (176 U. S., 298) without finding any definite principle established, unless it be that the court possesses the power, whenever it sees fit to exercise it, to take from the mortgage

*Strongly disapproved by Jenkins, J., in Farmers' Loan and Trust Co. *vs.* Northern Pacific R. R. Co., 68 Fed. Rep., 36.

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creditor the income, and even the principal fund belonging to him, for the purpose of applying it to the payment of unsecured claims. Let any one compare the decision in the Lackawanna case with the case reported immediately before it (176 U. S., 257) and try to reconcile the two decisions and he will be forced to "give it up." The Supreme Court says: "This court has uniformly refrained from laying down any rule as absolutely controlling in every case involving the right of unsecured creditors of a corporation, whose property is in the hands of a receiver, to have their demands paid out of net earnings in preference to mortgage creditors" (176 U. S., 285). There is even no certain ground presented upon which the power is said to rest. In the leading case* it is suggested that the income upon which the mortgagee was entitled to rely was only the net earnings, and that in accepting the security he impliedly agreed that current debts made in the ordinary course of business should be paid from current receipts before he should have any claim upon the income; and if earnings had in the past been used to pay the interest on the bonds, or to provide additional equipment, or to make lasting and valuable improvements, which ought in equity to have been employed to keep down debts for labor, supplies and the like, it was within the power of the court to use the income of the receivership to discharge such obligations. But in that case there was not the slightest evidence than any income had been

*Fosdick *vs.* Schall, 99 U. S., 235.

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diverted either by the company or by the receiver, and the question of diversion does not appear to have been argued by counsel.* It was also suggested that a court of chancery, when asked by railroad mortgagees to appoint a receiver pending foreclosure proceedings, might, in the exercise of a sound judicial discretion and as a condition of issuing the necessary order, impose such terms in reference to the payment from the income of the receivership of outstanding debts and labor supplies, equipment or permanent improvement of the mortgaged property as might "under the circumstances of the particular case appear to be reasonable."

In accordance with this purely *obiter* remark, one of our learned circuit judges, who has gained the distinction of being self-constituted guardian of general creditors, and whose denunciation of bondholders has been frequently more lurid than wise, adopted the custom of making the appointment of a receiver conditional upon the payment of all unsecured indebtedness in preference to the mortgage liens sought to be enforced, although protesting quite loudly that it was not really necessary, because the court had power to apply admiralty rules to instrumentalities of land transportation.

With respect to this the Supreme Court said:

"Can anything be conceived which more thoroughly destroys the sacredness of contract obligations? One holding a mortgage debt upon a railroad has the same right to demand and expect of the court respect for his vested and contracted priority as the holder of a mortgage on a farm or lot. * * *

*High on Receivers, 370.

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No one is bound to sell to a railroad company or to work for it, and whoever has dealings with a company whose property is mortgaged must be assumed to have dealt with it on the faith of its personal responsibility and not in expectation of subsequently displacing the priority of the mortgage liens."*

Yet the same court which made this declaration is found nine years afterwards saying:

"We have held in a series of cases that the peculiar character and conditions of railroad property not only justify, but compel, a court entertaining foreclosure proceedings to give to certain limited unsecured claims a priority over the debts secured by the mortgage. It is needless to refer to the many cases in which this doctrine has been affirmed. It may be and has often been said that this rule implies somewhat of a departure from the apparent priority of right secured by a contract obligation duly made and duly recorded, and yet this court, recognizing that a railroad is not simply private property, but also an instrument of public service, has ruled that the character of its business and the public obligations which it assumes justify a limited displacement of contract and recorded liens in behalf of temporary and unsecured creditors. These conclusions, while they to a certain extent ignored the positive promises of contract and recorded obligations, were enforced in obedience to equitable and public considerations."†

It will be observed how much stress is laid upon the fact that the unsecured claims and the displacement of the contract rights are "*limited.*" But what limit has the court ever placed upon the exercise of its power in this behalf? There have been cases where the court has refused to give a preference to

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*Kneeland *vs.* American Loan and Trust Co., 136 U. S., 89, page 97.

†174 U. S., 682.

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the unsecured claim, but this has not been because of any particular rule established by the court. "The decision in each case has been more or less controlled by its special facts" (176 U. S., 315). No counsel may, with any confidence, advise a client whether or not his demand comes within the class which the court will recognize as entitled to priority. No counsel may, with any confidence, advise a reorganization committee as to what moneys they will be required to furnish in order to satisfy preferential claims. This condition of doubt and uncertainty should be removed. Some fairly comprehensive rule should be established, and it should be followed in all the circuits. It may be that "no fixed and inflexible rule can be laid down for the government of the courts in all cases" (99 U. S., 254), but no one asks for such a rule. The fact that one cannot do a thing perfectly does not prevent one from doing it as well as he can. When we are told that there can be no *rule*, we are told in substance that there can be no *law*.

Where a body so learned and august as the Supreme Court of the United States has been unable or unwilling to formulate any method by which to test the right of an unsecured creditor to a preference over a lien creditor, it would be presumptuous on the part of a mere practicing attorney, laboring under the disadvantage of being a seeker after truth without the power of declaring effectively what is the truth, to suggest what such a method should be. But at all events it should prevent a manufacturer of steel rails who was or should have been fully in-

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formed respecting the mortgage debts of a railway company, and who sold to that company when it was trembling on the verge of insolvency, from exacting payment in full out of the trifling fund to which the hapless widow or executor or trustee who had innocently invested money in the mortgage bonds is obliged to resort in order to save a small fraction of the investment. It should recognize the fact that one who lends money, the product of labor, may have some slight equitable right to demand that the proceeds of his security shall be applied to his use and not diverted to that of another who was willing to sell at a profit supplies—no more a product of labor than the money loaned—or to do work, without taking any protective security, the debtor being wholly without credit in the financial world. It should discriminate between cases where the work performed or the materials furnished were manifestly necessary for the safety of the public, and cases where there was no real and substantial emergency. There is no sound reason for putting a premium upon heedlessness, carelessness and indifference.

The legislatures of many of the states have, it is true, devised in their wisdom statutes intended to deal with the problem, but it cannot be said that they have exhibited any broad, comprehensive or intelligent judgment in framing these laws. There is no uniformity about them. The different states are unable to agree upon the method of adjusting the respective rights of creditors. With the courts confessing inability to enunciate any principle and the legislatures laboring in confusion, we are confronted

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with a jumble on the one hand and a blank on the other. The situation is by no means creditable to the science of jurisprudence.

After the reorganizers have given up the task of guessing at what the courts will decide upon the question of prior and preferential claims and have indulged in the delusive hope that there may be a few general creditors who are not to be paid in advance of "secured" creditors, they begin to estimate the amount needed to rehabilitate the property and to endeavor to ascertain with reasonable certainty the true value of the existing bonds and shares of stock in order to give to their owners a fair proportion of the new securities. Money must be supplied and who is to supply it?

Naturally, the owners of the stock of the insolvent company are expected to make some contribution of money as a condition of receiving an interest in the reorganized company. It is customary to refer to this contribution as an "assessment," but the term is neither accurate nor descriptive. The stockholder merely buys an amount of the new securities proportionate to his holdings of stock. This apparently innocent method of procedure has been subjected of late to some judicial criticism, although it is doubtful whether the court intended to condemn the mere admission of the stockholder and exclusion of the general creditor in the absence of fraud or collusion.* The decision has been the cause of grave uncertainty in the minds of the profession.

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*The "Monon" Case, 174 U. S., 682.

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It is not disputed that bondholders may lawfully agree with other bondholders to purchase the mortgaged property at the forclosure sale, and deal with it as the owners after they have acquired the title. It is not disputed that the stockholders may agree with other stockholders to bid at the sale, and if they succeed in their efforts they may "reorganize" without objection. The general creditors may also combine, and if they are able to outbid their competitors, they too may "reorganize" in their own way.

It would seem, as well as may be ascertained from the opinion of the court in the "Monon" case, that if the bondholders and the stockholders come to any understanding *before* the sale, a wrong is perpetrated upon the excluded general creditor. That much injured person has been in some way defrauded. It is true that he has not been deprived of any contract right. He has not been excluded from the right to attend the sale and bid upon the property an amount sufficient to pay his claims. But, nevertheless, he he has been defrauded because railway properties are peculiar, because it is not easy for general creditors to combine together, because railways are usually bought by the parties in interest, and because when bondholder and stockholder join it is impracticable to compete with them.

The proposition thus asserted, although in a qualified way, by the Supreme Court, does not appear to be sustained by any well-considered authority, and it certainly tends to unsettle what was formerly sup-

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posed to be the law. If maintained to its full extent it will render it exceedingly difficult hereafter to reorganize any railroad property in an embarrassed condition.

A fraudulent conspiracy between bondholders and stockholders to bring about a default in the payment of the interest on the bonded debt, a foreclosure of the mortgage and a subsequent recapitalization in which the stockholders may obtain an interest to the exclusion of unsecured creditors, might justly receive judicial condemnation (R. R. Co. *vs.* Howard, 7 Wallace, 392). But where the company has become insolvent, where the mortgagees have the right to foreclose and have exercised that right, and even where the defendant corporation has expedited and facilitated the mortgagee in the assertion of that right, there should not be any imputation of fraud or impropriety in the enforcement of the security and the vesting of absolute title in the purchaser at the foreclosure sale, notwithstanding the fact that the motives and intention of the parties may have been to effect a reorganization in which the stockholders of the debtor company should receive a benefit (Dickerman, Trustee, *vs.* The Northern Trust Company, 176 U. S., 193).

An agreement between creditors of an insolvent to buy in the insolvent's property at a judicial sale and then to give to the insolvent himself, or to set apart for his benefit, an interest in the property purchased is neither illegal nor void as contrary to public

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policy.* Nor is there anything illegal in an agreement, made in good faith by the bondholders of an insolvent railroad to buy in its property at a foreclosure sale and then to give to the stockholders of the former company an interest in its property, either for a consideration or without consideration.

Under the authorities such an agreement does not operate to cause any restraint in bidding. A creditor and his debtor may contract that at public sale, where all are permitted to compete, the creditor shall buy the property and afterwards apply a part of it to the debtor's benefit. There is nothing illegal or invalid in such a contract. It does not operate to depress the property or to cause it to be sold for less than its value. It is only a lawful means of protecting the property from sacrifice.†

It is not easy to see why, if a part of the whole number of creditors may join in buying the debtor's property at a judicial sale, and then give to the debtor a share in the estate, they may not agree in advance so to do. "How does an antecedent agreement to do a perfectly lawful act render it fraudulent?" asks the Supreme Court of Pennsylvania.‡ The right to participate in the benefit of the reorganization comes to stockholders not by virtue of their right as holders of stock, but purely from the grace of the prior lien creditors, who have, in the

*Bame *vs.* Drew, 4 Denio, 287; Wicker *vs.* Hoppock, 6 Wallace, 94–98; Shoemaker *vs.* Katz, 74 Wis., 374.

†Penn. Transportation Co.'s Appeal, 101 Penn. St., 576; Central Trust Co. *vs.* U. S. Rolling Stock Co., 56 Fed. Rep., 5; Paton *vs.* R. R. Co., 85 Fed. Rep., 838.

‡Kurtz *vs.* R. R. Co., 187 Penn. St., 59.

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absence of fraud, the power to give to whom they please an interest in the purchased property.*

These considerations were not presented to the Supreme Court upon the argument of the case to which reference has been made, because it was not supposed that they were pertinent to any question arising upon the record in the cause. It is to be hoped that when, if ever, the precise point is brought again before that court the subject will receive a thorough re-examination in the light of all the precedents and with facts instead of conjectures, upon which a definite decision may be based. At it stands now, it is not exaggeration to say that the Supreme Court has simply placed a dangerous weapon in the hands of those guerillas who hang about the outskirts of reorganizations and endeavor to levy tribute as a condition of abating the nuisance of their presence.†

Among those who are not well acquainted with the subject, there is an impression that the men who perform the work of reorganizing railway corporations are more concerned about their own profits than they are with regard to the interests of the bondholders and stockholders. The impression is, however, without foundation. In most instances the members of the committees are fully mindful of the

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*Dow *vs.* Iowa Central Ry. Co., 144 N. Y., 426–430; Ferguson *vs.* Ann Arbor Ry. Co., 17 N. Y. App. Div., 336.

†Since this was written Mr. Justice Woods has, in a carefully considered opinion, based upon the facts of the "Monon" case as developed upon the hearing before the master, re-affirmed the validity of the proceedings.

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obligations of their trust. The fact is that honesty and good faith usually prevail among those men who assume the task, often inadequately rewarded, of rehabilitating railroad properties. The great "reorganizers" of Wall Street are in truth and in fact honest and straightforward men. They are paid, of course, for their labor and trouble; no one could reasonably expect them to devote their time, their energies, their skill, and their acquaintance with the laws of business, to the benefit of others without receiving the same just compensation which professional men receive for similar services. But there are others who imitate the methods of the honorable bankers, who ape their style, who rely upon the gullibility of the innocent investor, and these men should be closely observed, and their schemes should be carefully scrutinized. In this field, as in every field, the character of the leaders and promoters deserves careful consideration. Those who are entitled to trust and confidence should receive it; but, after all, it is a matter of trust and confidence, and the public must place that confidence wisely or suffer the consequences of error and mistake.

The great evil which seems to me to be the one most deserving of condemnation in connection with railways, as well as with industrial and other corporations, is that of over-capitalization. Many thoughtful men regard with alarm the suppression of competition which they say comes from the multiplication of great companies. I cannot share in their apprehensions. Modern business had its beginning in the monopolies granted to such corporations as the East

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India Company. Whatever makes the necessities of life, or the conveniences of life, cheaper and easier to obtain, enures to the benefit of the community. The outcry against system, administrative economy and judicious restriction of expenditure is not unlike the unreasoning clamor against the introduction of machinery in our manufactures and upon our farms. Mankind has found all these labor-saving devices a source of benefit to the world, a potent factor in the development of civilization. The harm which is done to men by corporations does not arise from the mere existence of such combinations, nor from their practical operation as unified forces.

While temporary inconvenience may be caused in some instances by the fact that only a few men may be required to do the work which many men were formerly engaged to do, yet the saving of labor and the cutting off of unnecessary industry must, by all the laws of political economy, contribute to increase the prosperity of the world at large. The mischief is done by the unwise expansion of the evidences of debt and of the evidences of interest in the corporate properties. It leads to extortion, to speculation and to ultimate ruin. Let our legislators frame laws not to discourage legitimate combinations, but to restrict their issues of stocks and of obligations within reasonable bounds. They have made attempts to do so, but generally in a feeble and ineffective way, because, I fear, they have often striven to appear to give protection to the public without any real or sincere intention to accomplish that result. Let our reorganizers recognize the fact that the multiplication of "securi-

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ties" only leads to renewed insolvency and to the ruin of investors. In recent years they have come to appreciate this truth; and I am glad to say that I believe that the day has gone by when it is thought that the way to rehabilitate a corporate property is to increase the burdens upon it. It seems to be probable that the time will soon come, if it has not come already, when railway reorganizations will be few and far between, and the many pages of treatises and reports devoted to these topics and which now fill our libraries to repletion may soon become as obsolete as those of the quaint old volumes which treat of fines and recoveries, of casual ejectors, and of trials by wager of battle.

There are many other features of railway reorganization which tempt one to wander further over the broad field of discussion, but the temptation, like most other temptations, must be resisted. A young lawyer in Florida once wrote to me asking what books he should read in order to become familiar with what he called "corporation law." I told him that he had better read them all. But after mature reflection I am satisfied that, so far as reorganization is concerned, the reading of books and the study of cases is of minor importance as compared with a thorough acquaintance with the methods and the machinery of what is known as "finance." You will not find between those covers of that underdone pie-crust color which seems to be sacred to the law so much of value as you will find in the book of human nature, which is open to all, but whose secrets are revealed more fully to the man who has been trained

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in the school of experience than to one who merely reads as he runs. Those who give their time and their thoughts to the work of re-adjustment of corporate interests learn that they are most often sailing on an uncharted sea. Precedent vanishes before the iconoclasm of practical judgment. That which is supposed to be firmly established by a long line of judicial utterances is soon discovered to be inapplicable to the state of facts presented when the railway is brought into the forum where the judges control. We can only conjecture what the courts may think of our case. We can only satisfy ourselves fairly that what we are aiming to accomplish is just and reasonable. We may, however, rest assured that in the fight which has been waged so long and persistenly between business necessities and statutory law and the decisions of judges, the contest will, in the long run, be decided in favor of "business" as it has always been decided in the past. Until we shall possess the blessings of communism, until property rights shall have become the plaything of popular prejudices, until the rewards of industry and labor shall have been made to be of no value, we may be certain that the common sense and the integrity of our courts will, in spite of occasional aberrations due to fortuitous circumstances, render substantial justice to all and give to each and every one that to which he is entitled as a citizen of a country whose government is constitutional and under whose laws the rich man is entitled, in theory at least, to the same rights as those which are accorded to the poor.

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I fear that I have already trespassed too long upon your patience, yet I cannot close without saying a few words about some things which pertain to our profession.

It is to be lamented that the tendency of the day is to commercialize, if I may coin that term, the noble science of the law. In our great cities especially we find the practice of law largely degenerating into a sort of trade, where the influence of the almighty dollar appears to dominate the bar rather than the spirit of those lofty ideals which animated the great lawyers of past generations. We find, for example, men persistently violating our long-established canons by a reprehensible method of self-advertisement.

Yet, perhaps it is in accord with the spirit of the day. In these times the keenness of competition is felt in every branch of trade, of commerce and of intellectual labor. As the complexity of civilization increases, as its manifold forces are developed further and further, the struggle for existence becomes more and more intense, and it goes on at the bar as well as in all the varied pursuits of life. Yet I am rejoiced to say, for the credit of our fraternity, that many of the old habits and tendencies which were once a reproach to the bar have disappeared as completely as the Court of Exchequer and the ancient order of Sergeants at Law. It may have been partially true fifty years ago, as Dickens, with that exaggerated emphasis for which he is noted, has said, "that the one great principle of the English law was to make business for itself;" and upon that assertion he built up the formidable indictment against chan-

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cery and chancery practice which you will find in the pages of "Bleak House." But such an indictment would to-day be thrown out by any grand jury of the vicinage. The "making of business" by the promotion of litigation, the multiplication of papers and proceedings, the prosecution of frivolous appeals, belongs, if it belongs to any, to the very dregs of the profession, who bear the same relation to the bar which the cowardly deserter bears to the tried and faithful soldier.

The popular idea about the lawyer is that his great, and, indeed, his principal function is in the trial of causes before courts and juries. It is true that this is an important branch of the profession; that it affords the most conspicuous field for the exercise of the highest powers of the intellect—the acuteness, the mental grasp, the mastery of men, the clear and convincing eloquence wich go to make up the great advocate; and notwithstanding the manifold changes in the prevailing methods of thought and action which have caused many to believe that the days of the great speakers have passed away, and that the reign of King Orator has given place to the reign of King Editor, there are to-day, in Maryland and in New York, advocates, whose names will readily occur to you, as persuasive as Sir James Scarlett, as powerful as Daniel Webster, and as eloquent as that elder Choate, of Massachusetts, whose tradition is already dimmed by the lustre of our honored representative at the Court of St. James. Still, very often, one is tempted to say of some of these forensic displays, which so gladden the souls of the newspaper

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reporters, what Sidney Bartlett of Boston, said of one of Roscoe Conkling's turgid and inflated speeches, paraphasing the famous criticism on the Charge of the Light Brigade at Balaklava, "It is magnificent, but it is not *law.*" After all, the trial and test of the useful lawyer comes not so much in the glare of the forum as in the daily work of conference and counsel in the quiet of the consultation room. It is there puzzles of life are presented and studied and solved. It is there that the terms and provisions are settled of the contract which is to make or mar a fortune. It is there that are thought out the moves in the great game of chess, which mortals are always playing. It is there that the plans are devised, considered and adopted upon which the battle is to be fought, the campaign conducted. The man of the court room may be—indeed, he is—the man of power and the man who draws to himself the attention, the admiration and the applause of the public; but the work which tells, the work which endures, is the work of the office, the library and the study.

I have no doubt that all of us at times have deplored the disposition on the part of men generally to be humorous and sarcastic at the expense of members of what are called "the learned professions." I have often thought seriously of this tendency to jest at the men who are the trusted advisers of their fellow-men with regard to their business, their health and their religion. As the accomplished editor and author, whose loss we all lament, the late Irving Browne, remarked, in his book on "Lawyers and

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Literature:" "To call a clergyman a hypocrite, a physician a murderer, and a lawyer a liar has long been one of the favorite amusements of a numerically considerable part of mankind." You find the mechanic who cannot comprehend how a man can be of use unless he toils with his hands, the merchant who does not scruple to get the better of a customer in the barter and trade which make up his life, and the stockbroker who derives his princely revenues from a pursuit which some people perhaps rather harshly compare with one against which our police regulations are extremely rigorous, all disposee to fling their sneer against the man who they say will espouse any cause if he is paid to do it, and impoverishes his clients in his insatiate greed for what they term "fat fees."

But these men, I have observed, are devotedly trustful toward their own particular legal advisers, just as they are towards the doctor who attends to their precious health and towards the minister who looks after the welfare of their immortal souls. So I am sure that it is a mistake for us to resent their witticisms upon us. We know that, in spite of the caustic comments of the lay brotherhood, they must have us, and they demonstrate our value by choosing for their rulers and their legislators the men of the law. I venture to say that, wherever you find the forces of civilization at their highest, wherever you find freedom, sound government, true manhood triumphant, you will find the lawyers predominant.

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There is a question whether the duty of the lawyer demands that he should take an active part in politics. I think that the dignity and influence of the bar have invariably suffered while individuals may have reaped advantage from engaging in the strife and competion of political life, and at the same time I cannot deny that the man who devotes his life to the study of the rules which lie at the foundation of the social organism, ought, in all reason, and in the discharge of his obligations towards his country, to take his share of the burdens and responsibilities of government. If the lawyer feels that the duty he owes to the commonwealth requires him to sacrifice his ease, his comfort and his profit to the gods of politics, he must remember that he must have principles of his own and a sense of right and wrong for his guidance. He need not manufacture for himself a new set of political opinions; he need not stand aloof from party organizations as one specially conscientious or pre-eminently honest; but he should attach himself to no party which is wrong in essential things or which stands for principles which his conscience cannot approve. Giving little heed to popular clamor, he should always remember that whatever may be the present current of public opinion, it will eventually hold him responsible for his own acts.

My brothers, in the every-day work which you and I have to perform, it is the adapting of principles to the facts of our case which is the task we are compelled to execute. We come in contact with the events, the incidents, the complicated situations of

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life. It is not what the theoretical rule is, but the fitting of that rule to our client's case, which affords the principal problem for our solution. The multiform manifestations of the life of the times present to us the shifting surface upon which we must engrave our lines and our inscriptions. We cannot afford to rest with the knowledge which we have gained in the study, but we must add the experience which we acquire in the workshop. In the words of a great lawyer, "unless, like the pious and fanciful enthusiast in 'Old Mortality,' we occasionally deepen the letters of the inscription, they will soon be overgrown with moss and lichen, wear away by exposure, and leave not a trace behind of what was designed to be engraved for a perpetual remembrance." Haste and heedlessness will not bring fame or usefulness. One night in the blast furnace will make mountains of slag, but pearls grow and diamonds crystallize after long years—years which often seem slow and tedious, but which lead to the crowning glory of pure and perfected wisdom.

I am loath to close. What Lincoln called "the mystic chords of memory," stretching back to the days of youth and of ambition, vibrate with peculiar melody. I feel that it would be a glorious thing to begin over again the lawyer's life in the light of the experience which has come to all of us who are of my own years. What could we not accomplish? How faithfully would we pay the debt we owe to our profession! We have realized that the law is no "lawless science," no "myriad of precedent," no

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"wilderness of single instances," but the perfection of reason, the last result of human wisdom, a structure built upon the broad foundations of principle. May we always be her worthy exponents, and may we demonstrate to mankind that "the seat of the law is the bosom of God; her voice the harmony of the world."

Mr. President: The next order of business is the report of the Committee on Legal Biography.

Mr. Graham: The only report of the committee is a memoir on Judge Charles B. Roberts, of the Court of Appeals, by Mr. Charles E. Fink.

In Memoriam.

Hon. CHARLES B. ROBERTS.

Since the last annual meeting of this Association, death has carried from our midst the Hon. Charles B. Roberts, Chief Judge of the Fifth Judicial Circuit.

Judge Roberts' genial manner, his kindness and consideration were such, that I am sure every member of the bar of this state mourned his death as that of a dear and intimate friend.

At the end of the earthly career of men in public life, their friends seek to extol some of their actions, virtues or traits of character which distinguish them above their fellows.

The life of Judge Roberts is fruitful of such topics. I might fill many pages and consume much of your time in detailing his

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distinguished services during the four years he was a member of Congress representing the Second Congressional District of Maryland; I might speak of his untiring and successful efforts in behalf of the Life Saving Service, or of his eminent services in obtaining large appropriations for the improvement of the Baltimore harbor; for the latter, the prominent business men of Baltimore presented him with a set of resolutions expressing their appreciation of his labors in behalf of the city's interests. But these actions of his public life have become part of our state history.

I might dwell upon his career as Attorney General of Maryland or as a member of our Court of Appeals, but I am unable to express myself with such elegant diction or in such eloquent language as the Hon. John P. Poe, the Hon. George R. Gaither, Jr., the present Attorney General, or the Hon. Chief Judge McSherry, in their eulogies delivered in the Court of Appeals in October last, as recorded in the 89th Maryland Report.

As an intimate personal friend of the late Judge Roberts I desire to call your attention to his character as a man—as one of "nature's noblemen." His genial disposition and magnetic manner made him beloved by all who came in close contact with him; in fact it has frequently been said that no man could remain his enemy if he suffered himself to come within the radius of Judge Roberts' immediate presence; his frank, cordial and jovial manner, words and actions disarmed all hostile intentions and dispelled any bitter or unfriendly thoughts.

His reluctance to give offence or to wound the feelings of others was notable, and his inability to refuse a favor or request amounted almost to a weakness. His charity was boundless, in fact the aid and assistance he gave to others in need almost tended to impoverish himself.

His home was open at all times to his friends and acquaintances and he never seemed to enjoy himself more than when he was entertaining his friends at his own fireside; many who now hear me and who have participated in his lavish and generous hospitality can testify that he was a typical and inimitable host, surpassed only by that most amiable and admirable

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lady who now mourns his loss—the loss of a husband unequaled in tenderness and affection.

No man was better or more favorably known or more popular in his own state than Judge Roberts, or, as the people in their affectionate regard loved to call him, "Charlie" Roberts. In his own county his popularity was such that his merest wish was law; and when he was put forth as a candidate for office or for preferment, he met with little or no opposition from those of opposite political affiliations. Twice he was elected judge; once as associate, then as chief judge, in his district, without any candidate being nominated against him by opposite political parties.

What young lawyer of the past eight years does not recall his first appearance in the august presence of the Court of Appeals, his heart in his throat, his body in a tremor and his voice almost inarticulate, and does he not further recall with emotion and gratitude the reassuring words of Judge Roberts, spoken with fatherly familiarity and tenderness which served in a great measure to dissipate his "stage fright" and encourage him for future work.

We will ever remember Judge Roberts as an able, impartial and upright judge, affable and considerate to all, fully conscious at all times of the grave responsibility of the duties of his position.

We will also remember him as a most genial companion and friend, generous and gentle in disposition, easily accessible to rich and poor alike, always ready to give aid to those in need, advice and consolation to the troubled and suffering, possessing in an eminent degree those enviable qualities of mind and heart which endeared him to us all and elicited our affectionate regard.

Of him we may truthfully say, "none knew him but to love him, none named him but to praise."

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The President: I would like to ask if the Committee on Nominations is now ready to report?

Judge McSherry: The Committee on Nominations begs leave to submit the following report:

For President—Mr. Stevenson A. Williams, of Bel Air. For Secretary—Mr. Conway W. Sams, of Baltimore. For Treasurer—Mr. Frank G. Turner, of Baltimore. For Vice-Presidents—First Circuit, Jas. E. Ellegood; Second Circuit, Hope H. Barroll; Third Circuit, Judge N. Charles Burke; Fourth Circuit, Gilmor S. Hamill; Fifth Circuit, Elihu S. Riley; Sixth Circuit, Hattersly W. Talbott; Seventh Circuit, John B. Gray; Eighth Circuit, Charles W. Heuisler and Walter I. Dawkins. Executive Council—Richard Bernard; J. Augustine Mason; George M. Russum, and Charles H. Stanley.

The President: What is your pleasure with reference to the report?

Mr. Poe: I move it be accepted, and the gentlemen named be appointed.

The motion was seconded, and carried unanimously.

Mr. Sams: The President requests me to announce the following delegates to the American Bar Association: Judge John P. Briscoe; Thomas H. Robinson, and Joshua W. Miles.

Mr. Wirt: I would like to offer the following resolution:

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Resolved, That a committee of three be appointed by the President, to provide for a suitable celebration of "John Marshall Day," February 4th, 1901, and that said committee be authorized to make all arrangements for such celebration and to draw upon the Treasurer of this Association for the necessary expenses thereof, subject to the approval of the Executive Council.

Resolved, That the Bar Association of Baltimore City be invited to unite with this Association in a joint celebration.

Resolved, That we ask the cordial co-operation of the Maryland Bench and Bar to make the celebration of "John Marshall Day" worthy of the memory of an eminent jurist, whose inestimable contributions to the cause of constitutional government should be ever cherished, not only by the members of our profession but by the whole American people, so long as men shall reverence law, honor patriotism and love liberty.

Mr. Chairman, I would like to say a few words in support of the resolution I have offered. I think we must all agree that as a soldier, statesman and jurist the figure of John Marshall stands heroic in the dim light of the early days of the republic.

After a distinguished career at the bar, John Marshall took his seat as Chief Justice of the Supreme Court of the United States at its first session, in the City of Washington, on the fourth of February, 1801, and for more than a third of a century filled that exalted position with fidelity and ability.

The proposition for the celebration of "John Marshall Day" originated with the Illinois State Bar Association, whose delegates were instructed to present the matter to the American Bar Association at its session in Buffalo, New York, in August last.

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The American Bar Association unanimously endorsed the request, and appointed a committee of fifty-one members, who now have the matter in charge. This Committee has issued an address on the subject and has already provided for a celebration at Washington.

It is proposed to have a celebration in Washington, to be attended by the President, Judges of the Supreme Court and other officials. Hon. Wayne MacVeagh has been selected as the orator. In Richmond the orator will be Mr. Justice Gray of Massachusetts. As Marshall was appointed by John Adams, it was thought fit to have the orator from Massachusetts for the celebration at Richmond.

Many State and Local Bar Associations throughout the country have arranged for celebrations, and the proposal has met with a generous response from the Bench and Bar of the United States. I trust that we of Maryland will not be backward in the movement, but that under the resolutions just offered, provision may be made for a celebration of the day, worthy of the memory of Chief Justice Marshall, and creditable to ourselves. It seems to be most appropriate that we should do so, and the educational value of such a celebration will be great. Never more than at present were the American people prone to glorify the man of action—the soldier and the sailor. There may not be an undue appreciation of the deathless deeds of daring and courage of such men. In all ages their deeds have been commemorated in marble and bronze, and in the memory of their grateful countrymen. And yet there is, I

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think, also a disposition to forget those quieter formative influences which have shaped our destinies as truly as the sword.

The late Severn Teakle Wallis in his eloquent address at the unveiling of the statue of his own illustrious Chief Justice Taney, in 1872, calls attention to this fact:

"The pathway of a great judge does not lead through the realms of fancy. Neither in reality nor in retrospect is there much of the flush of imagination upon it or about it. With such a career art cannot deal, nor history, as with those brilliant lives, which dazzle while they last, and are seen only through a halo when they are over. The warrior, the orator, the poet—each in his way—is linked with the imagination or the enthusiasm of mankind; and so the broken sword, the unstrung lyre, the shattered column with its cypress wreaths, all have their voices for the common heart."

But great judges are, to a large extent, segregated from their fellows by the functions of their office. They may be venerated and revered, so that all heads shall be bowed and uncovered when they pass. But they go when life closes, into the chamber of heroes fated to dwell afar off, only in the memory and minds of men."

As lawyers, therefore, it should be a pleasure and a privilege to have the opportunity of impressing upon the American people how vital to the perpetuation of the free institutions of our country was the work of Marshall and his associates upon the bench. It is a striking illustration of the fact that while the

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soldier and the sailor risk their lives in defense of the institutions and flag of their country, it is the lawyer who formulates and develops those institutions and makes the flag worth saving, because the Constitution follows the flag.

It will be an opportunity to strengthen the respect of our people for a pure judiciary, which Marshall said "comes home in its effects to every man's fireside, and passes on his property, his reputation, his life, his all. The greatest scourge an angry heaven ever inflicted upon an ungrateful and a sinning people was an ignorant, a corrupt, or a dependent judiciary."

To rightly appreciate the work of Marshall, we should remember that he entered upon a new and untrodden way, without the light of the lamp of experience to guide his footsteps. But two decisions upon Constitutional questions had been rendered by the court prior to his taking his seat. The Constitution, it is true, had been written, but the ideas prevalent with regard to it were vague and emotional, rather than rational. Out of the plastic material of the Constitution, the Supreme Court, under the guidance of Marshall, developed a body of principles to regulate the executive, and to set the just and proper limits of national legislation.

It is not too much to say that without changing a word of the Constitution, the Supreme Court, in those earlier days, by the mere force of judicial construction, might have changed the whole character of this government, and made a loose aggregation of vague

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and conflicting powers instead of a mighty nation, built upon strong and enduring foundations.

At this time when constitutional questions of grave import will engage the attention of the people, it will be good to stimulate the study of those earlier times. They may be studied in the impersonal light of a far perspective, and such contemplation may throw much light upon the questions now looked at principally through the spectacles of partisan zeal.

Already much information has been gathered together. Mr. Adolph Moses, of the Chicago Bar, has published a pamphlet entitled "How to celebrate John Marshall Day," which contains quite a complete biography of the subject. Callaghan & Co., of Chicago, have issued in pamphlet form, the celebrated eulogy by Horace Binney, delivered in Philadelphia, in 1835. The addresses of Chief Justice Warte and Mr. William Henry Rawle, delivered in 1884, at Washington, on the occasion of the unveiling of the statue of Chief Justice Marshall, (found in the appendix to 112 U. S. Reports,) have also been reprinted in pamphlet form.

The American Bench and Bar, and the American people may well profit by pausing in their accustomed vocations to meditate upon the work of the legal giants of those early days, and lay a wreath upon the tomb of John Marshall.

Mr. Hinkley: I second the motion.

The resolution was unanimously adopted and the following were appointed as the Committee on "John

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Marshall Day:" John S. Wirt; A. Hunter Boyd, and Conway W. Sams.

The President: The program has now been completed and the Association is open to any suggestions that the members may desire to make.

Mr. Riley: I would like to offer the following resolution:

Resolved, That the Maryland State Bar Association hereby tenders its thanks to the Allegany Bar Association, the Cumberland Club, the President and Directors of the Cumberland and Pennsylvania Railroad Company, the Baltimore & Ohio Railroad Company and Honorable Judge Boyd, for the courtesies extended to the members of the Association during their delightful sojourn in the Queen City of Maryland.

The motion was seconded by Mr. Turner, put, and carried unanimously.

Mr. Ellegood: Mr. President, from the addresses which we have heard, convincing us of the importance of the organic law, and the law in its general aspect, as well as in its application to one of the great industries of the country, I think we must be impressed with the momentous relation which the law and the lawyer bears to the commonwealth, and with the duty of the lawyer to give his aid in all matters pertaining to the public welfare; I therefore make the motion that the Chair appoint a committee to draft and present to the next session of the General Assembly, a bill for the prevention of bribery at elections.

It is difficult to overstate the importance of the relation which the legal profession holds to the com-

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monwealth, for the lawyer has to do with that most important of all subjects—the law—the vital breath of the government. It is all pervasive, like the atmosphere, and, like the atmosphere, its equal pressure upon all sides preserves the state in equilbrium, and saves it from chaos and anarchy. The framework of our government, state and national, illustrates the weighty part which the lawyer takes in the affairs of state. One department is exclusive under his control, and while we are accustomed to speak of the legislative department as the embodiment of the sovereign power, we must recognize the fact that all the laws may come to the mill of the judiciary for interpretation and application. And it will be conceded that the lawyer exerts a great, if not the leading influence in the law-making body, state and union; while in the executive department, nineteen of the twenty-four Presidents of the United States have been lawyers. We see, therefore, the importance of the lawyer and what a great responsibility he bears in promoting good government. Professor Bryce in his work on the American Commonwealth says: "for the first sixty or seventy years of the Republic, the leading statesmen were lawyers, and the lawyers, as a whole, moulded and lead the public opinion of the country."

We are all aware that where the public sentiment lags, the law becomes a dead letter. It is therefore the duty of the lawyer of to-day to be diligent to "mould and lead the public opinion of the country" upon all matters pertaining to public morals and

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public policy, and by all means to stem the tide of political corruption that threatens to overwhelm our free institutions.

In addition to promoting pure government by proper legislation, I conceive it to be even more important to awaken the *public conscience* to the fact that the man who directly or indirectly aids or abets in the buying of votes, not only commits a crime against a republican form of government, but he commits a crime against the constitution of the state, which forever disfranchises him and disqualifies him for holding office, and commits an offence against the election law which subjects him to the penitentiary.

When candidates realize that the essence of the crime consists, not in the "conviction" but in the fact, the candidate with a due moral perception will not prefer dishonorable success to honorable defeat, and will not permit his ambition to blind the vision of his conscience. Party leaders should open their eyes not only to the truth, that "corruption wins not more than honesty" but also to the wholesome truth that a crime is none the less heinous because committed in the name of party.

The public should also be aroused to the sense of impending danger. With vast wealth accumulated in the hands of trusts, corporations and individuals, corrupt enough to use it, and venal voters willing to sell, our elections in some places become more like auctions, where manhood suffrage is a thing of merchandise. Mr. Bryce, who is regarded as a penetrating and discriminating writer upon our govern-

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ment and institutions, says, in regard to corruption in politics in America, "the fair conclusion from the facts is that many do not realize the evil who ought to realize it and be alarmed, and that those who do realize it are not sufficiently alarmed. They take it too easily."

Mr. Graham: I would suggest as an amendment that the subject be referred to the Committee on Judicial Administration, to report to this Association at the next meeting.

Mr. Ellegood: I have no objection to that.

Mr. Robertson: I would suggest that the committee be appointed from the First and Fifth Congressional Districts.

Mr. Graham: I am afraid that the gentleman must have some sinecure to move him to include the first.

The motion was put, seconded and carried.

Mr. Sams: I have a telegram from a gentleman who has always taken a great deal of interest in the Association—Mr. Whitelock—who sends his greeting.

The President: If there is no other business, the motion to adjourn is in order.

Mr. Poe: I move the Association adjourn.

The motion was seconded, put, and carried, and the Association adjourned.

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FORMER PRESIDENTS.

JAMES McSHERRY,
Frederick.

ROBERT RANDOLPH HENDERSON,
Cumberland.

JOHN PRENTISS POE,
Baltimore.

HENRY PAGE,
Princess Anne.

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FOR 1900-1901.

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STEVENSON A. WILLIAMS,
Bel Air.

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First Judicial Circuit,	JAMES E. ELLEGOOD, *Salisbury.*
Second Judicial Circuit,	HOPE H. BARROLL, *Chestertown.*
Third Judicial Circuit,	N. CHARLES BURKE, *Towson.*
Fourth Judicial Circuit,	GILMOR S. HAMILL, *Oakland.*
Fifth Judicial Circuit,	ELIHU S. RILEY, *Annapolis.*
Sixth Judicial Circuit,	HATTERSLY W. TALBOTT, *Rockville.*
Seventh Judicial Circuit,	JOHN B. GRAY, *Prince Frederick.*
Eighth Judicial Circuit,	CHARLES W. HEUISLER, *Baltimore.*
Eighth Judicial Circuit,	WALTER I. DAWKINS, *Baltimore.*

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SECRETARY:

CONWAY W. SAMS,

31 Bank of Baltimore Building, Baltimore.

TREASURER:

FRANK G. TURNER,

3 East Lexington Street, Baltimore.

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RICHARD BERNARD,	*Baltimore.*
J. AUGUSTINE MASON,	*Hagerstown.*
GEORGE M. RUSSUM,	*Denton.*
CHARLES H. STANLEY,	*Baltimore.*

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COMMITTEES.

COMMITTEE ON LEGAL BIOGRAPHY:

JOHN P. BRISCOE, *Chairman*, Prince Fred'k,	Seventh Circuit.
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MADISON B. BORDLEY, Centreville,	Second Circuit.
JOHN F. GONTRUM, Towson,	Third Circuit.
GEORGE WHITELOCK, Baltimore,	Eighth Circuit.
ELIHU S. RILEY, Annapolis,	Fifth Circuit.
BAKER JOHNSON, Frederick,	Sixth Circuit.
A. A. DOUB, Cumberland,	Fourth Circuit.
JOHN F. WILLIAMS, Baltimore,	Eighth Circuit.

COMMITTEE ON JUDICIAL ADMINISTRATION AND LEGAL REFORM:

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JOSEPH C. FRANCE, Baltimore,	Eighth Circuit.
JAMES E. ELLEGOOD, Salisbury,	First Circuit.
HENRY R. LEWIS, Denton,	Second Circuit.
THOMAS H. ROBINSON, Bel Air,	Third Circuit.
W. VIERS BOUIC, JR., Rockville,	Sixth Circuit.
CHARLES E. FINK, Westminster,	Fifth Circuit.
ROBERT R. HENDERSON, Cumberland,	Fourth Circuit.
L. ALLISON WILMER, La Plata,	Seventh Circuit.

COMMITTEE ON ADMISSIONS:

JOHN S. WIRT, *Chairman*, Elkton,	Second Circuit.
JOSHUA W. MILES, Princess Anne,	First Circuit.
N. CHARLES BURKE, Towson,	Third Circuit.
J. CLARENCE LANE, Hagerstown,	Fourth Circuit.
JAMES REVELL, Annapolis,	Fifth Circuit.
ASHLEY M. GOULD, Rockville,	Sixth Circuit.
J. FRANK PARRAN, Prince Frederick,	Seventh Circuit.
MICHAEL A. MULLIN, Baltimore,	Eighth Circuit.
RALPH ROBINSON, Baltimore,	Eighth Circuit.

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JOHN R. PATTISON, Cambridge,	First Circuit.
WILLIAM H. ADKINS, Easton,	Second Circuit.
FRANK I. DUNCAN, Towson,	Third Circuit.
J. MALCOM DORSEY, Ellicott City,	Fifth Circuit.
BAKER JOHNSON, Frederick,	Sixth Circuit.
GEORGE C. MERRICK, Upper Marlboro,	Seventh Circuit.
ALLAN MCLANE, Baltimore,	Eighth Circuit.
ALFRED S. NILES, Baltimore,	Eighth Circuit.

COMMITTEE ON LEGAL EDUCATION:

BENJ. A. RICHMOND, *Chairman*, Cumberland,	Fourth Circuit.
JOHN P. POE, Baltimore,	Eighth Circuit.
GEORGE R. GAITHER, JR., Baltimore,	Eighth Circuit.
HENRY PAGE, Princess Anne,	First Circuit.
HOPE H. BARROLL, Chestertown,	Second Circuit.
ELMER J. COOK, Towson,	Third Circuit.
FRANCIS NEAL PARKE, Westminster,	Fifth Circuit.
ASHLEY M. GOULD, Rockville,	Sixth Circuit.
C. C. MAGRUDER, Upper Marlboro,	Seventh Circuit.

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LIST OF MEMBERS.

Adkins, W. H.	Easton,	1896
Allen, Edward M.	Bel Air,	1898
Ambler, James M.	207 N. Calvert st., Baltimore,	1897
Applegarth, Rufus W.	10 E. Lexington st., Baltimore,	1897
Armstrong, Alexander	Hagerstown,	1896
Baer, Thomas S.	818 Equitable Bldg., Baltimore,	1897
Baetjer, E. J.	205 E. German st., Baltimore,	1898
Baker, J. Henry	10 E. Lexington st., Baltimore,	1899
Barnes, Adlai P.	Snow Hill,	1896
Barroll, Hope H.	Chestertown,	1896
Bayless, W. H.	Daily Record Bldg., Baltimore,	1897
Beck, William W.	Chestertown,	1897
Bernard, Richard	1 E. Lexington st., Baltimore,	1897
Bernard, Alfred D.	1 E. Lexington st., Baltimore,	1897
Bernei, Louis B.	12 St. Paul st., Baltimore,	1897
Biddison, John S.	Towson,	1897
Blackistone, D. J.	Cumberland,	1896
Blake, George A.	Elkton,	1900
Boarman, R. R.	Towson,	1897
Bond, Nicholas P.	830 Equitable Bldg., Baltimore,	1896
Bond, J. A. C.	Westminster,	1896
Bonsal, Leigh	500 Equitable Bldg., Baltimore,	1897
Bordley, Madison B.	Centreville,	1896
Bouic, W. Viers, Jr.	Rockville,	1896
Bowen, Philander A., Jr.	1410 G st., N.W., Washingt'n, D.C.,	1898
Bowie, Washington, Jr.	Fidelity Building, Baltimore,	1900
Boyd, A. Hunter	Cumberland,	1896
Boyd, J. Cookman,	16 Builders Exchange, Baltimore,	1899
Brantly, William T.	12 St. Paul st., Baltimore,	1897
Brinton, Daniel L.	312 Law Bldg., Baltimore,	1897
Brent, Robert F.	104 E. Lexington st., Baltimore,	1897
Briscoe, John P.	Prince Frederick,	1896
Broening, Henry J.	230 St. Paul st., Baltimore,	1897
Brown, Stewart	222 St. Paul st., Baltimore,	1896
Brown, Arthur George	222 St. Paul st., Baltimore,	1897
Brune, W. H.	315 Law Bldg., Baltimore,	1897
Bryan, William S., Jr.	101 N. Charles st., Baltimore,	1898

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Budnitz, Emil	20 E. Lexington st., Baltimore,	1897
Bunting, J. Briscoe	Prince Frederick,	1896
Burke, N. C.	Towson,	1897
Burton, Robert	315 Law Bldg., Baltimore,	1899
Bussey, Robert H.	Towson,	1898
Campbell, Peter J.	20 E. Lexington st., Baltimore,	1896
Carey, Francis K.	830 Equitable Bldg., Baltimore,	1896
Carr, James E., Jr.	218 St. Paul st., Baltimore,	1899
Carrington, Edward C.	110 E. Lexington st., Baltimore,	1897
Chancellor, A. Bernard	11½ E. Lexington st., Baltimore,	1897
Chapman, James W., Jr.	310 Equitable Bldg., Baltimore,	1900
Chew, Philip W.	Upper Marlboro,	1896
Clabaugh, Harry M.	Westminster,	1896
Claude, W. Hallam	Annapolis,	1898
Cohen, Jacob I.	Merchants Bank Building,	1897
Collins, Oliver D.	Snow Hill,	1897
Contee, John B.	Upper Marlboro,	1898
Cook, Elmer J.	Towson,	1898
Covington, George W.	Snow Hill,	1897
Covington, James H.	Easton,	1897
Crain, Robert	607 Fidelity Bldg., Baltimore,	1898
Cross, E. J. D.	B. & O. Central Bldg., Baltimore,	1897
Cross, Richard K.	12 St. Paul st., Baltimore,	1897
Cross, W. Irvine	B. & O. Central Bldg., Baltimore,	1897
Crothers, Austin S.	Elkton,	1898
Curley, James P.	400 Equitable Bldg., Baltimore,	1900
Dawkins, Walter I.	311 Fidelity Bldg., Baltimore,	1896
Dawson, W. H.	33 S. Gay st., Baltimore,	1897
Dennis, J. Upshur	Baltimore,	1897
Denny, James W.	209 St. Paul st., Baltimore,	1897
Devecmon, W. C.	Cumberland,	1896
Deweese, William H.	Denton,	1897
Dickerson, William T.	Snow Hill,	1896
Dillehunt, Harry B.	10 E. Lexington st., Baltimore,	1899
Dobler, J. J.	Baltimore,	1897
Donaldson, John J.	220 St. Paul st., Baltimore,	1897
Dorsey, J. Malcolm	Ellicott City,	1900
Dorton, Frederick T.	444 Equitable Bldg., Baltimore,	1899
Doub, A. A.	Cumberland,	1896
Doub, Daniel W.	Hagerstown,	1896
Duer, Robert F.	Princess Anne,	1897
Duncan, Frank I.	Towson,	1898
Ellegood, James E.	Salisbury,	1896
Eichelberger, Edward S.	Frederick,	1896

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Eichelberger, Edward C.	114 E. Lexington st., Baltimore,	1897
Elliott, Thomas Ireland	400 Equitable Bldg., Baltimore,	1897
Evans, William S.	Elkton,	1898
Farber, Edwin J.	110 N. Charles st., Baltimore,	1898
Fauble, T. Marvin	Frederick,	1898
Fechtig, James A., Jr.	16 E. Lexington st., Baltimore,	1900
Fink, Charles E.	Westminster,	1896
Fisher, D. K. Este	744 Equitable Bldg., Baltimore,	1897
Fisher, T. Pliny	Denton,	1896
Fisher, William A.	744 Equitable Bldg., Baltimore,	1897
Forbes, George	Annapolis,	1896
France, Joseph C.	Bank of Balto. Bldg., Baltimore,	1897
Fowler, David	Towson,	1897
Gaither, George R., Jr.	728 Equitable Bldg., Baltimore,	1899
Gans, Edgar H.	300 Equitable Bldg., Baltimore,	1897
Gibson, Edward Guest	511 Fidelity Bldg., Baltimore,	1897
Gill, N. Rufus	215 St. Paul st., Baltimore,	1899
Gill, Roger T.	215 St. Paul st., Baltimore,	1900
Goldsborough, Ph. Lee	Cambridge,	1897
Gontrum, John F.	Towson,	1897
Gordon, Robert H.	Cumberland,	1896
Gorter, James P.	224 St. Paul st., Baltimore,	1896
Gosnell, Frank	102 E. Lexington st., Baltimore,	1896
Gould, Ashley M.	Rockville,	1898
Graham, Robert P.	Salisbury,	1896
Grason, William G.	Towson,	1898
Gray, John B.	Prince Frederick,	1896
Green, Nicholas H.	Annapolis,	1899
Gregg, Maurice	114 E. Lexington st., Baltimore,	1896
Gresham, Le Roy	3 E. Lexington st., Baltimore,	1900
Griffin, E. J.	215 E. Fayette st., Baltimore,	1897
Haines, L. M.	Elkton,	1896
Hamill, Gilmor S.	Oakland,	1897
Hardcastle, Alexander, Jr.	Bank of Balto. Bldg., Baltimore,	1898
Harlan, Henry D.	9 E. Biddle st., Baltimore,	1897
Harley, Charles F.	110 E. Lexington st., Baltimore,	1897
Harman, Samuel J.	8 E. Lexington st., Baltimore,	1898
Harvey, Roland B.	500 Equitable Bldg., Baltimore,	1900
Hawkins, G. S.	Bel Air,	1896
Hayes, Thomas G.	944 Equitable Bldg., Baltimore,	1897
Henning, David N.	Westminster,	1896
Henninghausen, Percy C.	215 St. Paul st., Baltimore,	1897
Henderson, Robert R.	Cumberland,	1896
Hendrickson, Finley C.	Cumberland,	1900

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Herman, Emmanuel A.	Towson,	1898
Hershey, O. F.	606 Fidelity Bldg., Baltimore,	1898
Herzog, Charles	110 E. Lexington st., Baltimore	1897
Heuisler, Charles W.	504 Fidelity Bldg., Baltimore,	1897
Hill, Charles E.	3 E. Lexington st., Baltimore,	1898
Hinkley, John	215 N. Charles st., Baltimore,	1896
Hinks, William H.	Frederick,	1897
Hisky, T Foley	215 N. Charles st., Baltimore,	1897
Hoen, Ernest J.	Hoen Bldg., Baltimore,	1898
Hodson, Thomas S.	6 E. Lexington st., Baltimore,	1897
Holland, Charles F.	Salisbury,	1897
Houlton, S. C.	2 E. Lexington st., Baltimore,	1897
Howard, Charles Norris	700 Equitable Bldg., Baltimore,	1897
Hughes, Adrian	219 Courtland st., Baltimore,	1897
Hurst, John J.	513 Law Bldg., Baltimore,	1900
Hynson, R. D.	Chestertown,	1896
Johnson, Baker	Frederick,	1896
Johnson, J. Hemsley	Bank of Balto. Bldg., Baltimore,	1897
Johnson, Reverdy	Bank of Balto. Bldg., Baltimore,	1896
Jones, R. D.	Snow Hill,	1897
Jones, E. T.	601 Fidelity Bldg., Baltimore,	1897
Keating, Thomas J., Jr.	Centreville,	1896
Keedy, J. M.	Hagerstown,	1896
Keedy, M. L.	Hagerstown,	1896
Kennard, Henry C.	506 Fidelity Bldg., Baltimore,	1899
Knott, A. Leo	3 E. Lexington st., Baltimore,	1897
Kealhofer, William	Hagerstown,	1897
Knapp, Charles H.	8 E. Lexington st., Baltimore,	1899
Lane, J. Clarence	Hagerstown,	1896
Lankford, Clarence P.	Crisfield,	1896
Lankford, H. Fillmore	Princess Anne,	1897
Lauchheimer, Sylvan H.	752 Equitable Bldg., Baltimore,	1899
Lawrence, J. M. T.	Towson,	1897
Lee, John L. G.	B. &. O. Central Bldg., Baltimore,	1897
Lee, Richard Laws	232 St. Paul st., Baltimore,	1897
Legg, J. H. C.	Centreville,	1897
Lehmayer, Martin	Herald Bldg., Baltimore,	1897
Leist, Frederic	Post Office Bldg., Baltimore,	1897
Levy, William B.	501 Fidelity Bldg., Baltimore,	1898
Lewis, William Penn, Jr.	Builders Exchange, Baltimore,	1898
Lewis, Henry R.	Denton,	1896
Lindsay, James J.	Towson,	1896
Little, C. A.	Hagerstown,	1896
Lloyd, Henry	Cambridge,	1897

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Loweree, George E.	Laurel,	1896
Lowndes, Lloyd	Cumberland,	1897
Lowndes, Lloyd, Jr.	Cumberland,	1900
Lynch, John A.	Frederick,	1897
Macbeth, J. E.	Cumberland,	1900
Mackall, Thomas B.	222 St. Paul st., Baltimore,	1897
Mackenzie, Geo. Norbury	300 Water st., Baltimore,	1897
Magruder, C. C.	Upper Marlboro,	1896
Mann, Harry E.	100 E. Lexington st., Baltimore,	1897
Marbury, William L.	922 Equitable Bldg., Baltimore,	1897
Marshall, Charles	12 St. Paul st., Baltimore,	1898
Martin, William R.	Easton,	1896
Mason, J. Augustine	Hagerstown,	1897
Mason, John T., R.	200 E. Lexington st., Baltimore,	1897
Maulsby, William P.	Frederick,	1896
Maynadier, George Y.	Bel Air,	1896
McCleave, Hugh R.	Cumberland,	1900
McComas, L. E.	Washington, D. C.	1897
McHenry, James A.	Cumberland,	1897
McHenry, James I.	Cumberland,	1898
McIntosh, David G.	Towson,	1898
McLane, Allan	44 South st., Baltimore,	1899
McLane, Robert M.	44 South st., Baltimore,	1899
McMichael, Robert W.	Cumberland,	1897
McMaster, W. S.	Princess Anne,	1897
McSherry, J. Roger	Frederick,	1897
McSherry, James	Frederick,	1896
Merrick, George C.	Upper Marlboro,	1899
Miles, Alonzo L.	Bank of Balto. Bldg., Baltimore,	1897
Miles, Joshua W.	Princess Anne,	1897
Mister, Beverly W.	400 Equitable Bldg., Baltimore,	1900
Mitchell, John H.	La Plata,	1896
Mitchell, John T.	Oakland,	1900
Motter, John C.	Frederick,	1897
Morris, Thomas J.	708 Park ave., Baltimore,	1897
Morris, John T.	215 N. Charles st., Baltimore,	1899
Morrison, Taylor	Cumberland,	1898
Mullikin, Clayland	Easton,	1897
Mullin, Michael A.	609 Fidelity Bldg., Baltimore,	1897
Mullin, Joseph C.	609 Fidelity Bldg., Baltimore,	1899
Munroe, James M.	Annapolis,	1899
Neill, Alexander	Hagerstown,	1896
Niles, Alfred S.	Herald Bldg., Baltimore,	1897
Norwood, Frank C.	Frederick,	1897

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Owens, James W.	Annapolis,	1898
Owens, Fred. R.	Denton,	1897
O'Brien, William J., Jr.	804 Fidelity Bldg., Baltimore,	1897
Packard, Joseph	207 N. Calvert st., Baltimore,	1897
Page, Henry	Princess Anne,	1896
Parke, Francis Neal	Westminster,	1898
Parran, J. Frank	Prince Frederick,	1896
Pattison, John R.	Cambridge,	1897
Pearce, James A.	Chestertown,	1896
Pearre, George W.	Cumberland,	1898
Perkins, William H., Jr.	700 Equitable Bldg., Baltimore,	1900
Phelps, Charles E.	Walbrook, Baltimore,	1897
Piper, A. A.	Towson,	1898
Poe, John P.	100 E. Lexington st., Baltimore,	1896
Prettyman, Charles W.	Rockville,	1900
Purnell, Clayton	Frostburg,	1896
Quigley, Charles H.	401 Law Bldg., Baltimore,	1899
Ralston, Jackson H.	Washington, D. C.,	1896
Reese, D. Meredith	213 Courtland st., Baltimore,	1897
Reifsneider, Charles T.	Westminster,	1896
Reifsneider, Charles T., Jr.	Westminster,	1899
Reifsneider, John Milton	Westminster,	1898
Requardt, J. Fred.	322 Equitable Bldg., Baltimore,	1897
Revell, James	Annapolis,	1900
Revell, E. J. W.	503 Fidelity Bldg., Baltimore,	1900
Reynolds, De Warren H.	Cumberland,	1896
Rhodes, Frank V.	701 Fidelity Bldg., Baltimore,	1897
Richmond, Benjamin A.	Cumberland,	1896
Riggs, Lawrason	919 Equitable Bldg., Baltimore,	1896
Riley, Elihu S.	Annapolis,	1896
Robb, David A.	Cumberland,	1900
Robertson, Alex. H.	324 Equitable Bldg., Baltimore,	1896
Robinson, Ralph	741 Equitable Bldg., Baltimore,	1896
Robinson, Thomas H.	Bel Air,	1896
Rogers, James C.	Hyattsville,	1900
Rogers, John G.	Ellicott City,	1898
Rogers, Robert L.	46 Post Office Bldg., Baltimore,	1899
Rose, John C.	628 Equitable Bldg., Baltimore,	1897
Ross, Charles W.	Frederick,	1897
Rouse, Willard G.	Bel Air,	1896
Russum, George M.	Denton,	1897
Rutherford, Allan	Gaithersburg,	1899
Sadtler, Howard P.	626 Equitable Bldg., Baltimore,	1897
Sams, Conway W.	Bank of Balto. Bldg., Baltimore,	1896

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Sappington, A. DeR.	502 Equitable Bldg., Baltimore,	1897
Sasscer, Frederick	Upper Marlboro,	1900
Savage, George	415 Law Bldg., Baltimore,	1897
Schley, Buchanan	Hagerstown,	1896
Schmucker, Samuel D.	1712 Park ave., Baltimore,	1897
Scott, Norman B., Jr.	Hagerstown,	1896
Sebold, Vincent	Frederick,	1897
Seth, Joseph B.	Easton,	1899
Shanahan, Charles E.	102 E. Lexington st., Baltimore,	1897
Shanklin, Arthur P.	Towson,	1899
Sharp, Abraham	100 E. Lexington st., Baltimore,	1899
Sharp, George M.	Baltimore,	1896
Simmons, Thomas W.	Cambridge,	1897
Sincell, Edward H.	Oakland,	1898
Skinner, Maurice E.	416 Equitable Bldg., Baltimore,	1897
Slay, William M.	Chestertown,	1897
Slingluff, Fielder C.	309 Fidelity Bldg., Baltimore,	1899
Sloan, D. Lindley	Cumberland,	1900
Sloan, David W.	Cumberland,	1896
Smith, George W., Jr.	Hagerstown,	1896
Smith, Robert H.	622 Equitable Bldg. Baltimore,	1897
Spamer, C. A. E.	215 N. Charles st., Baltimore,	1897
Stake, Edward	Hagerstown,	1898
Stanford, H. L. D.	Princess Anne,	1896
Stanley, Charles H.	400 Equitable Bldg., Baltimore,	1897
Steele, Guy W.	Westminster,	1898
Steele, John N.	830 Equitable Bldg., Baltimore,	1898
Steiner, Hugo	309 Law Bldg., Baltimore,	1897
Stevens, Francis P.	Herald Bldg., Baltimore,	1897
Stewart, David	101 N. Charles st., Baltimore,	1897
Strite, A. C.	Hagerstown,	1896
Stockbridge, Henry	11 N. Calhoun st., Baltimore,	1897
Stoner, Frank L.	Frederick,	1897
Story, Fred. W.	Builders Exchange, Baltimore,	1897
Street, J. M.	Bel Air,	1899
Syester, Louis D.	Hagerstown,	1897
Straus, Isaac Lobe	12 St. Paul st., Baltimore,	1900
Talbott, William H.	Rockville,	1896
Talbott, Hattersly W.	Rockville,	1899
Taylor, A. H.	205 E. German st., Baltimore,	1898
Taylor, Calvin B.	Bel Air,	1897
Tharp, Alfred L.	Easton,	1897
Thayer, F. A.	Oakland,	1898
Thomas, George C.	221 St. Paul st., Baltimore,	1899

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Thomas, George L.	12 St. Paul st., Baltimore,	1897
Thomas, James W.	Cumberland,	1897
Thomas, William H.	Westminster,	1899
Thomas, William S.	Hoen Bldg., Baltimore,	1898
Tiernan, Charles B.	11 E. Lexington st., Baltimore,	1897
Tippett, Richard B.	601 Law Bldg., Baltimore,	1897
Toadvin, E. Stanley	Salisbury,	1900
Tome, Peter E.	33 S. Gay st., Baltimore,	1898
Towers, Albert G.	Denton,	1897
Trundle, W. Burns	301 St. Paul st., Baltimore,	1897
Turner, Frank G.	3 E. Lexington st., Baltimore,	1899
Tyson, A. Morris	207 N. Calvert st., Baltimore,	1897
Tull, Gordon	Princess Anne,	1897
Upshur, George M.	737 Equitable Bldg., Baltimore,	1898
Urie, John D.	Chestertown,	1897
Urner, Hammond	Frederick,	1898
Urner, Milton G.	Frederick,	1897
Van Bibber, George L.	Bel Air,	1898
Vickers, H. W.	Chestertown,	1897
Venable, Richard M.	205 E. German st., Baltimore,	1897
Wagaman, Charles D.	Hagerstown,	1896
Walsh, Michael E.	Westminster,	1898
Walsh, William E.	Cumberland,	1896
Walter, M. R.	Herald Bldg., Baltimore,	1897
Warburton, William T.	Elkton,	1898
Ward, Alfred L.	Easton,	1897
Warfield, Edwin	Fidelity & Deposit Co., Baltimore,	1897
Warfield, John	Daily Record Bldg., Baltimore,	1898
Warner, C. Hopewell	Herald Bldg., Baltimore,	1897
Waters, Henry J.	Princess Anne,	1896
Waters, J. Seymour T.	14 E. Lexington st., Baltimore,	1899
Watts, P. Bartley	222 St. Paul st., Baltimore,	1897
Weant, Edward O.	Westminster,	1898
Webster, J. Edwin	Bel Air,	1896
Whelan, Thomas A.	509 Fidelity Bldg., Baltimore,	1897
Wickes, L. W.	Chestertown,	1897
Williams, Ferdinand	Cumberland,	1897
Williams, Frederick R.	Bel Air,	1896
Williams, George Weems	3 E. Lexington st., Baltimore,	1900
Williams, Stevenson A.	Bel Air,	1897
Williams, Jay	Salisbury,	1897
Williams, John F.	509 Law Bldg., Baltimore,	1897
Willis, George R.	213 Courtland st., Baltimore,	1897

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Willison, Jasper N.	Cumberland,	1900
Wilmer, L. Allison	La Plata,	1896
Wilmer, Skipwith	207 N. Calvert st., Baltimore,	1897
Wilson, Austin A.	Cumberland,	1897
Wilson, George W.	Easton,	1896
Wilson, John Glover	Cumberland,	1897
Whitelock, George	708 Fidelity Bldg., Baltimore,	1896
Wirt, John S.	Elkton,	1896
Witzenbacker, William J.	Hagerstown,	1896
Wolff, Oscar	Herald Bldg., Baltimore,	1898
Worthington, Glenn H.	Frederick,	1897
Wright, Daniel Giraud	142 W. Lanvale st., Baltimore,	1897
Wingert, Henry F.	Hagerstown,	1897
Young, John S.	Bel Air,	1896
Yellott, Osborne I.	Towson,	1898
Yellott, John I.	Towson,	1898

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